

Washington State **Bar**
News Volume 37, No. 4, April 1983



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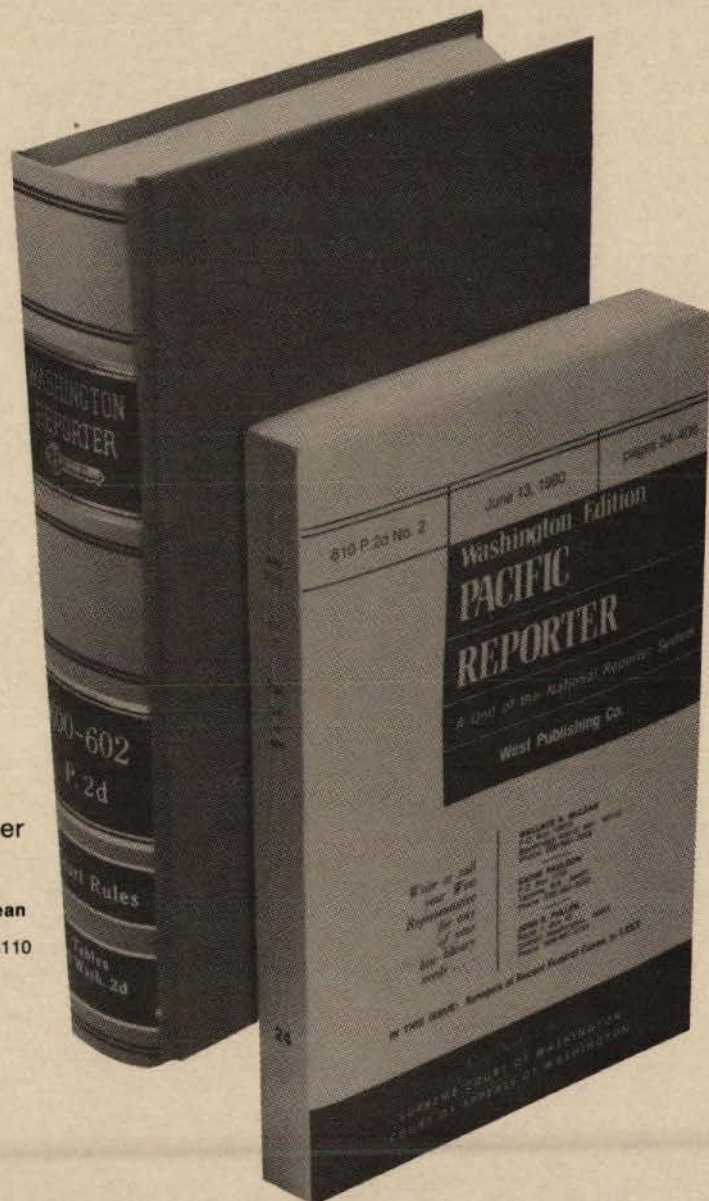
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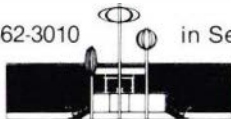
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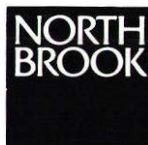


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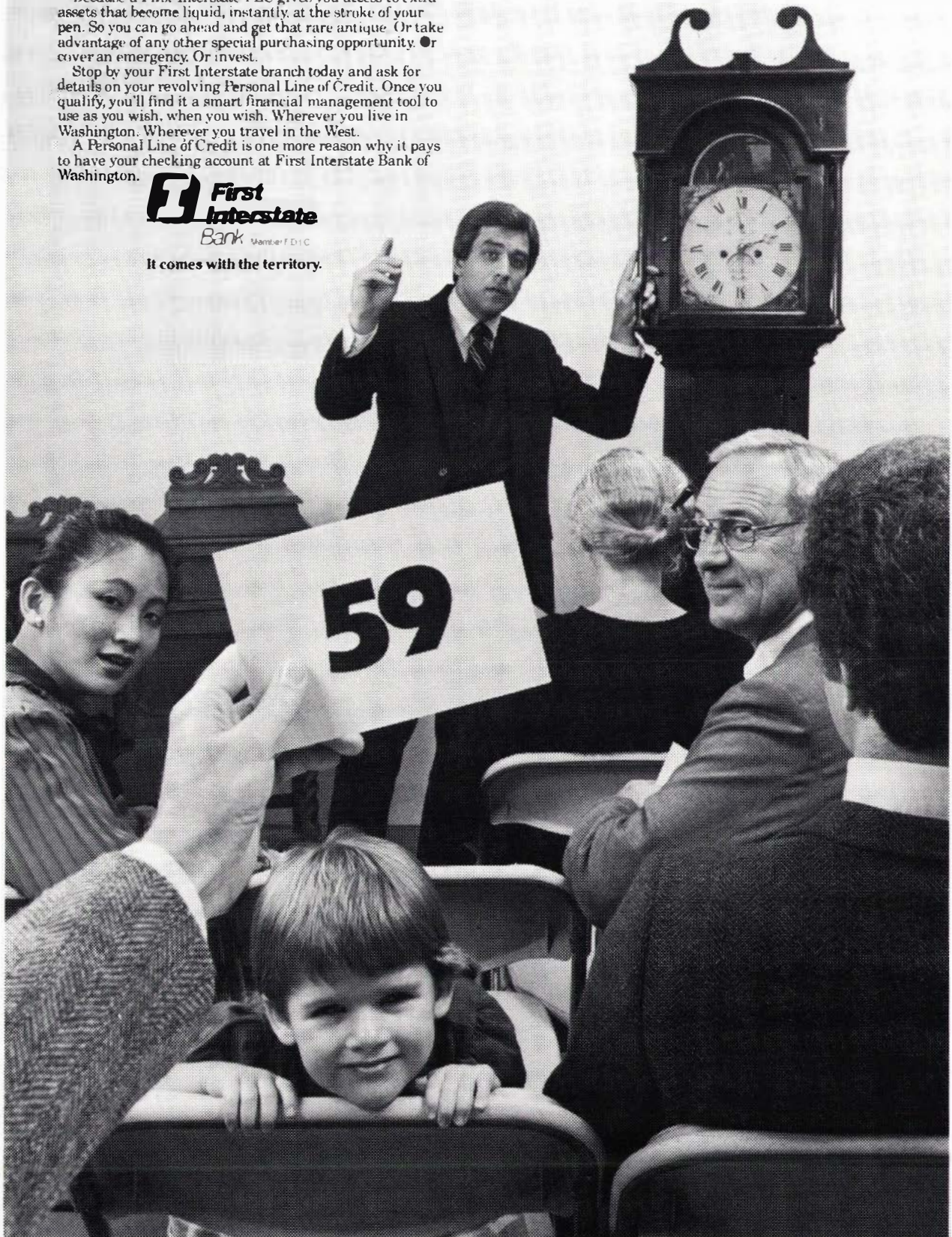
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Our Cover



In this issue, our authors discuss the lawyer "glut" in Washington: Fact or Fiction. Our cover art is entitled "Wedge" — pen and ink drawing by Elaine Y. L. Tsiang.

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Call to Action

Editor:

As a member of the now almost defunct State Judicial Council, I read with interest the excellent article by Hugh Spitzer, "Rules Blues," appearing in your January issue [*Bar News* 37:1:10]. I am in full agreement with Mr. Spitzer's analysis, conclusions and proposals as outlined in the article and in his "Court Rulemaking in Washington," 6 *UPS L. Rev.* 31 (1982), on which it is based.

The statute creating the Council, RCW 2.52, lists its duties as the (1) survey and study of the operation and accomplishments of the courts, (2) consideration of suggestions from judges, lawyers and citizens, (3) origination of methods to simplify and improve the

administration of justice, (4) periodic submissions of proposals to change rules and procedures, (5) composition of an annual report to the governor and legislature on proposed changes in rules and procedures, and (6) assistance to judges in preparing their annual reports to the Supreme Court.

Over the years the Council has made proposals to the legislature on matters of substantive legislation, an example being a recent proposal to permit Superior Courts to grant decrees of dissolution on stipulation, without oral testimony. While I oppose this amendment to the Dissolution Act, I believe its recommendation was an appropriate function of the Council and do not wish to see the Council eliminated or restricted to rule making.

To the extent that Mr. Spitzer's article was a "call to action" I urge the bar and the judiciary to seriously consider his recommendations and to propose and support a Constitutional amendment implementing them, with the ex-

ception of his recommendation that the Judicial Council appoint and presumably supervise the Court Administrator. Although I do not oppose that proposal, it is not strictly relevant to rulemaking, and, in my view, should be considered independently.

ROBERT C. BIBB

Superior Court Judge

Everett

Partnership Record?

Editor:

I have a question for your readers: Who has the oldest, surviving law office partnership in Washington?

I'm casting my vote for the Spokane law firm of Hennessy & Curran. Harry Hennessy and Tom Curran became partners on April 1, 1947, and are practicing law together to this day. In fact, Harry first hired Tom in 1946 as his law clerk!

GREGORY S. MORRISON

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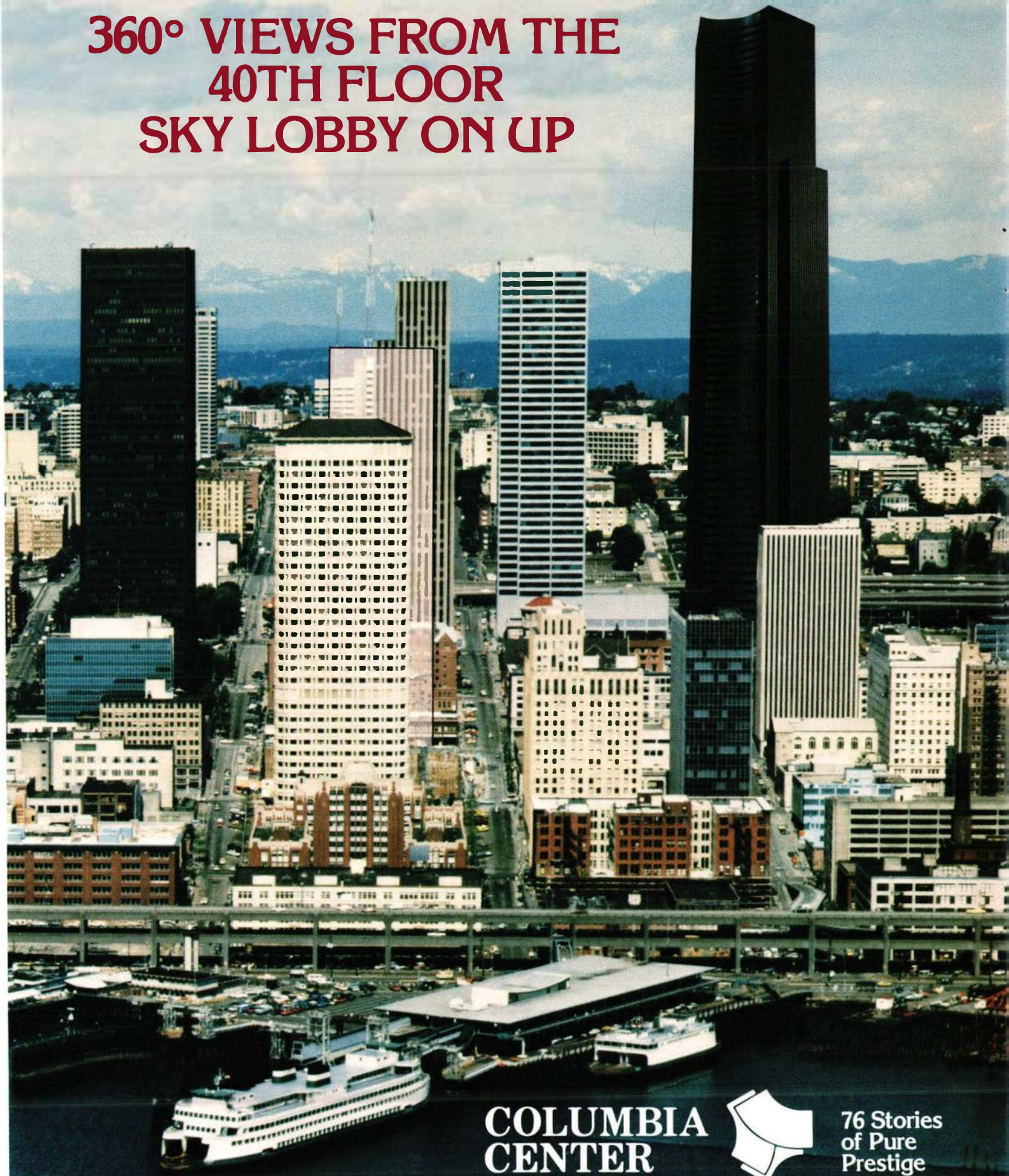
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Revised Rules Strengthen Disciplinary Process

Before going on the Board of Governors I served a three-year term as Chairman of the Disciplinary Board. That experience engendered a strong, continuing interest in the State Bar's role in attorney discipline. Contrary to apparent media impressions, our Bar has had one of the most effective programs in the country for enforcing professional standards among attorneys. It is the most effective self-policing activity among any of the learned professions in our state. We allocate nearly 50% of our Bar dues to maintain professional and ethical standards through the Disciplinary Program.

Effective January 21, 1983, the Supreme Court implemented a complete rewrite of the Disciplinary Rules for lawyers. As the new rules cover some 82 pages in the *Washington Reports*, it might be in order to summarize the major changes.

First, the nine-person Disciplinary Board is expanded to thirteen, including four lay members. The Board has had voting lay members in the past. Their number was increased so that the Board can now function in routine matters through four Review Panels, each composed of two lawyers and one lay person. The use of Review Panels is a major change, designed to cope with increasing calendar problems and to expedite disposition of some 1,300 complaints per year. Delay is anxiety-producing, to say the least, for lawyers with pending, unresolved grievances, and perceived delay has also produced some very bad press for our profession in the past.

A second change of great importance is the opening of the process to the public. After a complaint is filed and investigated, after a Review Panel finds that there is probable cause and issues a formal complaint, and after the lawyer files his answer to the complaint, the disciplinary process is "open" in much the same way that court proceedings are open to the public. Procedures exist for protective orders where justice requires, for example, to protect client confidences. In the past, secrecy was mandated for all disciplinary activity under penalty of contempt of court. As you know, we have taken some hard shots from the media for alleged cover-ups of lawyers, where in fact discipline was already being administered. This rule change should do much to increase public confidence in an already exemplary process.

Under the new rules the Local Administrative Committees have been replaced by Special District Counsel, local lawyers appointed to assist the Bar staff in disciplinary investigations. Local Administrative committees were anachronistic, dating back to the early days of the Bar Association when most discipline was administered by them and



local trial committees. In the 1975 rules, they were still recognized, but their role was unclear, and they have functioned inconsistently from county to county.

Another change is in the appeals provisions. In major discipline cases (disbarments and suspensions), the full Disciplinary board must review the case. Its action is final, subject to a right of appeal to the Supreme Court. For reprimands and censures there is now only discretionary review by the Supreme Court.

Most of our 12,000 lawyers do not get involved in disciplinary procedures and have little or no occasion to be familiar with these fairly complex rules. As a practice tip, may I suggest that if you do become involved, either as the subject of a complaint or as counsel for one complained against, you should feel free to contact the legal staff at the Bar office to ask for explanations and procedural help.

Paul W. Steere

Although the particulars are murky, it is clear that the job market for lawyers is not what it used to be. In thumbing their way through the newspaper to the want ads, unemployed factory workers in Allentown, Pennsylvania, may be consoled by the news that the price of success is not necessarily a J.D. sheepskin and a briefcase.

Certainly, it is not unheard of for other white-collar professions to occasionally veer toward the wrong side of supply and demand. The white collar has never been a fool-proof remedy to keep the wolf from the door. For instance, most of us can recall reading about hapless teachers and even engineers who woke up one day and abruptly found a glut on the market. But too many lawyers? *Impossible!* Other fields may wax and wane, but there's always room for another good lawyer. *Or is there?*

HOW MANY OF "US" ARE THERE?

How much have we grown anyway? In our respective small circles of friends, it is difficult to comprehend the extent of the burgeoning legal population.

Analyzing any statistical information involves certain philosophical leaps of faith. The old caveat comes to mind that "figures lie and only liars figure." Yet, any way you slice it, the increase in the number of lawyers in the United States as a whole and in Washington is mind-boggling.

There are over 500,000 lawyers practicing to one extent or another in the United States today. This represents an increase of at least 41% from 1971 when there were 355,242 lawyers, and of 75% from 1960 when the lawyer population was 285,933. The number of practicing lawyers in this country is projected to expand to 800,000 by the approach of 1990.

Whatever competition from imports our auto and steel industries may face, America is clearly the world leader in both lawyer production and legal expenditures. In 1980, approximately 12,000,000 lawsuits were filed in the 17,000 federal, state and local courthouses. Recent department of Commerce figures suggest that Americans spend more than 25 billion dollars a year on legal fees, up sharply from the 1966 estimate of four billion.

Presently, there are about 25 lawyers for every 1,000 United States citizens. Symbolically, our nation's capital leads the country with about one lawyer for every twenty residents. These levels dwarf the British, who can only boast of seven lawyers per 1,000 residents. Japan squeezes by on less than one lawyer per 1,000 residents.

WASHINGTON STATE'S EXPERIENCE

The national picture pales in comparison to the lawyer boom which the state of Washington has experienced over

LAWYER

Myth or

by William

the last two decades. The number of actively practicing lawyers in our state increased from 3,100 in 1965 to 10,700 in 1982, for a whopping figure of 245% more lawyers.

Since 1970, Washington Bar admissions have increased sharply over previous levels, with a total of 8,328 successful applicants from 1970 to the end of 1982. These newer admittees represent 78% of the State Bar's present active membership. The Washington State Bar Association grew more between 1972 and 1977 alone than it did in the preceding forty-five years of its existence.

This marked increase in the supply of lawyers in Washington is even more notable when it is compared to the much more modest increase in our state's population. From 1970 to 1980, Washington grew from 3,413,244 to 4,130,163 inhabitants, an addition of 21%. Yet, the population of the State Bar more than doubled between 1971 and 1982, a 129% increase from 5,671 to the present number of 10,700 actively practicing lawyers.

The Law School Boom

It is no great surprise that the educational capacity of Washington's new law schools has shown a striking increase since 1970. Combined law school enrollments at the University of Washington and Gonzaga University were stable at slightly over 500 between 1964 and 1969. Since that time, both of these schools have built new or expanded facilities and dramatically increased the size of their student bodies. They have also been joined by the University of Puget Sound School of Law, which made its debut in 1972.

Additional pressure on the legal labor market comes from out-of-state law school graduates who are either re-

Seattle attorney William S. Bailey is associated with the law firm of Levinson, Friedman, Vhugen, Duggan, Bland & Horowitz. Mr. Bailey also teaches trial advocacy at the University of Puget Sound School of Law.

R GLUT

Reality?

S. Bailey

turning home or who have read about the advantages of living and working in Washington. Large law firms have made increasing use of their resources to interview all over the United States for new associates.

Court Filings

The tremendous increase in the number of Washington lawyers since 1971 has not gone unnoticed by our court system. Between 1971 and 1981, civil filings rose 42% and total filings increased by 70%. The statewide number of Superior Court judges increased by 39% from 92 in 1972 to 128 in 1981. The total number of jury and non-jury trials in Superior Court advanced by 34% over this time. Proportionate increases in judicial activity have also been felt by the appellate courts of our state. While not yet complete, 1982 figures within the Washington court system indicate that a levelling-off is occurring.

WHY DO THEY KEEP COMING?

As Americans, we are used to seeing trends come and go. Yesterday's hula-hoop was dumped as unceremoniously as today's Pac-man game will be. Yet, law continues to be a popular career choice into the 1980s, despite dire warnings in newspapers, magazines, and on television. Why?

In the 1830s, at the height of Jacksonian agitation against lawyers, de Tocqueville had a rather elegant explanation of what makes our profession so attractive:

There are no nobles or literary men, and the people are apt to mistrust the wealthy; lawyers, consequently, form the highest political and the most cultivated portion of society. . . . If I were asked where I place the American aristocracy, I should reply without hesitation that it is not

among the rich, who are united by no common tie, but that it occupies the judicial bench and the Bar.

The power dimension of the legal profession is hard to deny. Twenty-four of our 40 presidents have been lawyers, as have nearly half of the governors elected since the Civil War. Many persons with legal training now head major corporations, universities, and foundations. History has also shown that the law is a healthy outlet for good, old-fashioned American idealism. The civil rights movement of the 1960s is one of the most vivid examples of this phenomenon.

Another deep-rooted part of American folklore which attracts large numbers to the legal profession is the vision of law as a recession-proof path to riches (or at least solid middle-class respectability). This traditional view is problematic. For example, in 1904, two-thirds of New York City's lawyers earned less than \$3,000 annually, and 2,000 Chicago lawyers in that same time period had incomes lower than a brickmason's union rate. In present-day terms, the median income level of lawyers in 1980 was about half of that for physicians.

It is difficult, however, to dispel the rich lawyer image as myth when many of the largest firms in this country, especially in New York City, are now starting their associates at \$40,000 per year. A 1980 estimate puts the average income of practicing lawyers at \$37,500, which is still attractive to many. Many Americans sincerely believe that "all lawyers are rich."

Baby-Boomers

In post-war America, many of the "baby-boomers" were brought up to believe that the career of a professional was one of life's highest callings. Doctor, lawyer or engineer—what parent hasn't rattled off law as one of these sanctified choices? Law has the additional "Lone Ranger" appeal of independence. If all else fails, a lawyer can go out on his or her own and hang out a shingle, hoping for the best. Law has a particular advantage among the professions in that it is the last frontier of the generalist. Unlike the back-breaking math and hard science curriculum necessary to a career in medicine or science, you can proceed to law school with just about any course of undergraduate study—be it home economics or Zen. In an era where undergraduate major-switching is epidemic, it is comforting to note that no bridges have been burned as far as law is concerned—anything will suffice as "pre-law."

The 93% Solution

The average law school catalog pays proper homage to the exciting and rewarding career of law and cites reassuring statistics that 93% of all graduates responding to a survey get a job within a year of graduation. The inflated salary level of "the best and brightest" may also be presented in this section, with the reassurance that "this could be you, too."

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However, the same catalogs fail to mention that this 93% employed figure omits a sizeable number of graduates who failed to respond. This group is likely either unemployed or underemployed.

There are probably as many permutations and combinations of why people go to law school as there are people in the profession. Suffice it to say there are a number of powerful forces which continue to present law as an attractive career. In fact, these forces may be getting stronger, as evidenced by the diminished fall-out in law school. A study by Paul D. Carrington and James J. Conley revealed that prior to 1964, as much as one-fifth of a first-year class at the University of Michigan Law School did not return for the second year. Since 1964, this drop-out rate has markedly decreased, with as few as one in twenty first-year law students failing to complete his or her degree.

THE CITADEL

Entry into the legal profession was virtually unregulated a century ago. As late as 1881, no state required study in any law school or even a college education. The standard method of training was study in a law office, and barely more than a third of the states even required this much.

After the creation of the American Bar Association in 1878 and the Association of American Law Schools in 1900, standards were established for the evaluation of law schools and for admission to the Bar. By the late 1930s, most states required some combination of college and law school.

'Other fields may wax and wane, but there's always room for another good lawyer. Or is there?'

As a consequence of these education requirements, one of the most formidable present-day obstacles to entering law is money. As of 1975, 38 of the 50 states required (and the other states encouraged) students to attend a three-year law school in order to become an attorney. At least 137 of the 163 ABA-approved law schools demand a college degree.

Since 1958, when Congress passed the National Education Defense Act, the availability of government loans has not kept pace with the considerable increases in undergraduate and law school tuition. The annual cost of obtaining a legal education went up nearly 110% between 1956 and 1966. In 1956, the average law school tuition was \$485 a year, rising to \$1,013 in 1966. By 1982, it is reasonable to assume that the total yearly cost of attending a law school in a public university is an average of \$7,000; the

average cost of attending a Harvard-type private university may exceed \$14,000 a year.

Money is only the initial hurdle. Law school prescribes a rigorous program of study, and not all graduate. Those that do face the delight of the bar exam. Although this test may be considered superfluous for graduates of accredited law schools, a sizeable number of candidates fail at least one examination. Ultimately, at least 95% of these students do pass a bar exam, though it may be on the second or third try.

THE GROWTH YEARS

One would assume that the massive increase in the supply of lawyers during the 1960s and 1970s was at least partially due to an increased demand in society for legal services.

Government regulation of business and labor picked up speed in the Kennedy and Johnson years to "get the country moving again." This increased the demand for lawyer-regulators within the government to write standards, and for lawyer-regulatees to *explain* these standards to bewildered and outraged clients. It became increasingly necessary for lawyers of private practice to represent their clients before the various governmental administrative bodies.

Aside from administrative agency regulation, there was also a massive increase in the number of laws and statutes

at the local, state and federal levels from the 1960s on. It is axiomatic that the more laws there are to explain, interpret and challenge through the court system, the more lawyers will be necessary to accomplish these purposes.

As an offshoot of these new statutes, as well as some landmark judicial rulings, whole new legal fields opened up. Products liability, environmental, consumer protection, employment discrimination and fair housing law are but a few examples of areas that did not exist in any meaningful sense prior to 1960. These areas have since come to employ a large number of lawyers, representing various interests. These legal breakthroughs have provided new services for the consumer to buy in the same way technological advances lead to new products.

Another predominant factor in expanding the job opportunities for lawyers was the rapid growth in the level of economic activity in this country. These were the go-go years where the economy was strong enough to have both guns *and* butter. We were fighting a major war in Vietnam, and at the same time we were expanding self-advancement opportunities to the war on poverty. The high level of economic growth required an increased level of legal activity to sustain it.

There was also a rise in disposable personal income among many sectors of the economy over this period. It



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has been said that Americans file more lawsuits than do other people because they have more freedom to do so and more material goods to fight over.

THE JOB MARKET TODAY

Many of the forces which led to the increase in lawyer jobs no longer exist. President Reagan's pledge to "get the government off the back of this country" has caused massive government deregulation. Federal administrative agencies no longer spin off unlimited amounts of legal work. In fact, a severe retrenchment has set in on this front.

The economy remains unpredictable. Businesses are exhausting their inventories and taking a wait-and-see approach. Major expansions are not planned in a time where survival is the watchword.

'Many of the forces which led to the increase in lawyer jobs no longer exist.'

In 1980, *Money Magazine* ranked lawyers, journalists and teachers as having the worst job prospects in the coming decade. The November, 1980, issue of the *Student Lawyer* was even more blunt:

The legal caste system is becoming increasingly entrenched, due in part to the glut of lawyers on the market. The major part—eighty-five percent—of the lawyer population faces unemployment, underemployment and insulting salary offers that are way below what Brahmin law firms in some of the Fortune 500 corporations are dishing out. The majority have set themselves up in solo practice or relocate without wanting to.

Rose-Colored Lenses?

In arguing against the lawyer glut theory, the nation's law schools often point to the annual employment and salary survey conducted by the National Association for Law Placement (NALP). At least 70% of the total graduates of ABA-approved law schools have filled out questionnaires indicating where they work and how much money they make.

The 1981 NALP study optimistically reports that "for the fifth consecutive year, unemployment has remained below seven percent for recent law school graduates. The flexibility of a law degree insures a high rate of employment for lawyers."

In 1980, James Kilmer, the head of a Chicago-based legal executive search firm, did a follow-up to the NALP report, questioning hundreds of new graduates. He found



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'The high salaries paid to the top 10% of law school graduates are the bait which draws the other 90% to law school.'

many of these people to be either unemployed or underemployed and too depressed, embarrassed or angry to respond to the NALP survey.

Kilmer estimates that as many as 40% of some recent graduating classes are not practicing law. There has been an increasing tendency for unemployed new lawyers to mask their status by ordering business cards and going into solo practice. Meanwhile, the United States Department of Labor's Bureau of Labor Statistics is churning out dire predictions which cast further doubt on the validity of the NALP reports. This agency predicts that by 1985, the market will be glutted by more than 600,000 attorneys and that fewer than five in six will find law-related work.

The Washington Situation

Is it any different here in Washington? Again, nobody knows for sure. The students who have success stories to tell fill out the forms for their respective law school placement offices. The others drift out of sight and fail to document their frustration, preferring the anonymity of the "no response" group.

The Washington State Bar Association attempted to survey the employment of 899 successful applicants for the February and July, 1975, and February, 1976, Bar examinations. There are some discouraging findings here. Sixty percent did not even return the questionnaire. A telephone spot-check of this group led the author to conclude that "at least one-third of the persons in this survey category were not engaged in the active practice of law."

Of those returning the survey instrument, 16% were not engaged in the active practice of law and half of this group were not employed in any capacity. Although 84% of those returning the survey were employed in some form of law practice, some of those employments were marginal at best. The lowest salary for those in active practice was \$500 per month (there were several of those). The lowest income for any lawyer engaged in active practice was \$200 a month (eight persons cited that figure, all sole practitioners).

Another indication of lawyer glut from the State Bar survey was that respondents in nonlaw-related positions were making more money than those in the active practice of law.

The Law Schools: Trouble Ahead?

The high salaries paid to the top 10% of law school graduates are the bait which draws the other 90% to law school. While the yearly salary survey conducted by *The Student*

Lawyer indicates that the top 10% group received up to a 200% increase in starting salary between 1976 and the present in major metropolitan areas, most of the other 90% have not kept up with cost-of-living increases. For example, the low end yearly salary in New York City was \$12,000 a year in 1976 and had only advanced to \$14,000 a year in November of 1982. All studies to date indicate that the attention paid to law school grades has created a caste system which effectively locks out many law school graduates from the higher-paying jobs. If the law job market is shrinking and the number of law school graduates is increasing, basic economics dictate that the "untouchability" of the other 90% will only get worse.

A special Joint Committee on the Demand for Legal Education in the 1980s, appointed by the American Association of Law Schools and the Law School Admissions Council, studied the lawyer glut problem in some detail. Taking care to hedge their bets, the Joint Committee nonetheless found it likely that there will be a decrease in the demand for legal education in the 1980s. This downturn projection was based primarily on the fact that the number of 22-year-olds in the United States will decrease after it peaks in 1983.

CONCLUSION

From the 1960s until now, the legal profession has enjoyed an unprecedented growth and prosperity. This has been felt on both the national scene and in Washington.

Yet since the mid-1970s, it has become increasingly obvious that there is a significant minority of our members facing low salaries, frustration, underemployment and unemployment due to an excess of lawyer supply over demand. Those recent graduates who did not go to prestigious law schools or who were not in the top 10% of their classes may find themselves effectively locked out of the legal profession.

What is most striking to date is the lack of careful study, planning or analysis that has been done by any of our major professional organizations. A challenge to the legal profession in the 1980s will be to find out more about the lawyer glut problem, see what can be done to prevent it from getting any worse, and plan effectively for the future to balance the forces of supply and demand.

We cannot afford to have a sizeable minority of our profession with this markedly diminished ability to make a decent living. □

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A Recent Graduate's Story

THE DARKER SIDE of Supply & Demand

by Mary H. McIntosh

Dear Ms. McIntosh:

We have reviewed hundreds of resumes and interviewed dozens of applicants for the Associate positions we are filling for next year. The quality of applicants exceeds all previous years. . . .

Dear Ms. McIntosh:

Your credentials make you an attractive candidate. However. . . .

And so it goes, looking for that first job during a recession in a lawyer-clogged region. First you draft a resume and then have it professionally printed. Then you draft the letters. At first they're tailored to The-Firm-To-Whom-You-Are-Inquiring, so you revise and re-revise. Then you type, Xerox, mail and wait. Some rejection letters, obviously aided by word processors, come so fast that you wonder if anything was read past your name and address. Others sound encouraging, but offer no jobs:

Dear Ms. McIntosh:

Thank you for your interest in our law firm. We, unfortunately, cannot extend you an offer at this time. Your resume and background are impressive and I am confident that you will be able to obtain a position that will compliment your interests and background. (*But not, of course, WITH US.*)

Then you land an interview: Ah, the butterflies . . . You drive to the city, you park, make one last trip to the mir-

ror. Then, handshakes, pleasantries, the obligatory comment on the view and the decor. Too soon, the questions begin. You wonder how they could be calculated to find out anything about you.

"What kind of law are you interested in?" (*Well, that all depends on what kind of a lawyer you're looking for.*)

"What are your hobbies?" (*Hobbies: Are you kidding? All I've done for two and a half years is eat, sleep, study, write briefs, answer interrogatories and summarize medical depositions.*)

And my favorite: "If you could describe yourself with one word, what would it be?" (*Ha! WONDERWOMAN, of course! How about DAZZLING! or REMARKABLE!*)

FANTASY & REALITY

I looked for a job for sixteen months. Because I ranked close to the top 5% of my class, I had the audacity to think I could find a job in Seattle, so I only sent out 65 resumes, went on 21 interviews and, finally, received and accepted an offer. Some of my friends and acquaintances blanketed larger areas with more intensity and received no offers.

A lot of employed lawyers I talked to were unsympathetic toward the plight of the Class of '82, and asked incredulously, "Well, what did you expect?" My reply was that, while the Class of '82, myself included, had applied for law school in mid-1978 when there was an ample supply of lawyers, we had had no idea that the situation would be this bad.

Furthermore, a first-year law student experiences excitement, terror and a tremendous crunch of work, so that psychological blinders go on about the time the letter of

Mary H. McIntosh is a Deputy Prosecuting Attorney for King County.

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acceptance arrives, and they stay on in order to survive. One cannot sacrifice that much for that long without believing that the pain will end some day with, at the very least, a potentially interesting job and a livable salary.

It was not until the beginning of the third year that reality hit. Some fellow classmates had permanent offers after their summer internships. At first, there were congratulations and story-swapping. Then, as the year dragged on, those with jobs either learned to shut up about it or faced criticism for flaunting.

There seemed to be an odd unfairness to the selections for the coveted positions. Firms seemed to be selecting daughters, sons and spouses of known, safe colleagues. The middle class seemed to be closing in on itself again after a decade of openness and merit selection. Government did not seem to be hiring at all. One man suggested that if the firms and government agencies were to gather all interested applicants together in one room for a lengthy discussion of substantive law and legal analysis, surely the choices would be different and would correspond more closely with merit.

FROM BAD TO WORSE

I have interviewed members of the present third-year class and things appear to be getting worse. A reliable source told me that one poor hopeful in the top 2% of his law school class had first interviews with most of the top

'His position in the upper part of his class put him in the middle of a mob.'

law firms in Seattle and *no* second interviews. Another student described to me his growing frustration with the job competition, a new emotion which he had never had to face before. He had always done well at academics and job searches. Now his position in the upper part of his class put him in the middle of a mob. He expressed dismay and discouragement as to what he could have done to be more marketable.

One woman, a former business analyst, described her law school decision as a disappointment. Another student, who kept his career while attending a night program, is now abandoning any idea of practicing law, despite ranking in the top 10% of his class.

Other lawyers I spoke with have remained at their first jobs for four or five years and are anxious to be promoted. They seem to feel stuck. It appears that those on up the promotional ladder are not continuing to move up as they would in a better economy. The only movement, therefore,

is lateral. However, because of the low rate of pay at which attorneys are now willing to work, the lateral movers find themselves being passed over for those willing to work for substantially less.

THE UNDEREMPLOYED LAWYER

I spent most of my time with my classmates, the Class of '82. We have the distinction of having graduated in a year when, for the first time in memory, some large law firms actually laid off attorneys. Lay-offs are rumored to be happening in Seattle, but the truth is hard to determine. The financial trouble that various law firms are in is also the subject of rumor. What is real and not so quiet is the unemployment and underemployment of a very large number of new attorneys.

Most classmates I interviewed were generally positive; the justifications and excuses I received were very creative. Some had taken jobs clearly below their abilities. Others were "free-lancing" or had continued their low-paying internships. When pressed, they would complain about the economy, the vagaries of the marketplace, and the surprise of hearing that so-and-so was hired by such-and-such ("Huh? He isn't that bright! How did he get that job?").

Overriding the anger and complaints, however, was a guarded excitement about whatever minor legal project was the project of the moment. No one readily explained how he or she was paying the rent. (I, for one, was not about

to tell of my embarrassing week working for a temporary legal secretarial service. Waiting tables or pumping gas would probably have been more lucrative.) The comments were very understandable. The need to maintain self-esteem and gradiosity is a natural response to finding oneself as a small fish in a rather big pond.

EGO TRIPS

The ego trip from the family at graduation and from the "Dear Successful Applicant" letter three months after the bar exam was short-lived. Looking for a job squelched it.

The frustration appears to be worse for those who went straight from college to law school, riding a wave of success. Now that they have reached the top, and are certified professionals, where is the payoff? I talked to others who were equally frustrated and who had always thought they would use their degrees to enhance their marketability in the business world. They now find that if the choice is between an MBA and a J.D., the business community always picks the MBA.

Clearly, the frustration stems partly from myths that surround lawyers and law school completion. It is undoubtedly heightened by media-hype, e.g., the lead stories in legal news media ranking the summer programs of various large law firms (*really, WHO cares?*), and advertisements in chic weekly newspapers suggesting that an ex-

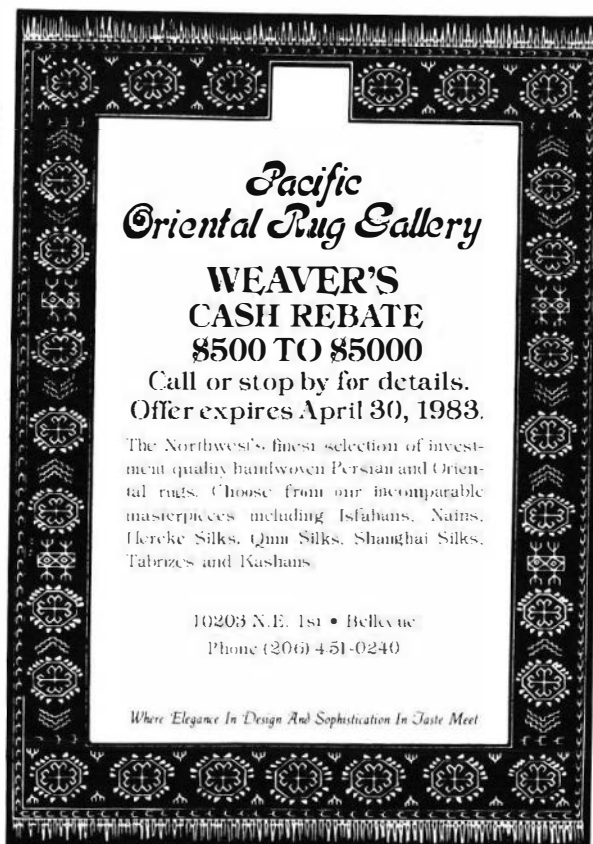


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pensive suit is better than a resume for landing a job. My big question was how tenaciously could I maintain my integrity in an attorney glut where preppy automatons seemed to be the order of the day?

SUPPLY & DEMAND

Various members of my graduating class direct their anger at the future. Some angry law students have hypocritically suggested that the Bar should erect barriers to prevent the entry of more attorneys into the profession. They are too bright to suggest that those walls be arbitrary. Instead, they propose something like mandatory periodic re-examinations. The stated goal would be to rid the profession of shysters and incompetents, presumably making room for the "better-qualified" Class of 1982.

I have not talked to any of the graduates with protectionist sentiments since they took the greatest cram-test invented, the bar exam. Perhaps now their enthusiasm for periodic re-testing would not be so strung. However, the sentiment of many unemployed recent graduates is clear: SHUT THE FLOODGATES. *But only after I AM IN.* Personally, I am appalled at this un-lawyerlike, selfish view. Perhaps overwhelming economic frustration is inhibiting these new lawyers' ability to reason!

'Law school is like paying on a mortgage for an expensive home that one cannot ever live in.'

A more healthy attitude is the lament of one student who shrugged, smiled, and then suggested that law school is like paying on a mortgage for an expensive home that one cannot ever live in.

On my personal job hunt, I encountered a certain degree of unnecessary insensitivity from those in power positions. I was strung along as a potential associate by firms that probably never intended to hire me. There also seemed to be ignorance that could be alleviated by more open discussion.

However, I do not intend to suggest that those with hiring authority are exacerbating the situation—that would be naive.

This discussion does not contemplate brilliant conclusions or proposals for the future. The law of supply and demand will likely operate to even things out. On the human side of the lawyer-glut scenario, however, there is a growing crop of frustrated and disappointed law school graduates, specifically in western Washington. And there are probably too many law students, too little law to be practiced, and too many lawyers wanting to locate in this heavenly area in which we live. □

Too Many Lawyers?

by **Frederic C. Tausend**
and **David Boerner**

Shakespeare had the most direct solution to the so-called "glut of lawyers." In *Henry VI*, Dick the Butcher advises mob leader Jack Cade, "The first thing we do, let's kill all the lawyers." Shakespeare also knew that the breakdown of the social order and its replacement by mob rule (the intended result of the elimination of lawyers and the destruction of the Inns of Court) would lead inevitably to oppression and tyranny.

Before we advocate or accept solutions less cruel but probably not much less severe than Shakespeare's, we should ask why America has so many lawyers per capita compared with other cultures and why the lawyer plays such an important role in this country.

OUR LEGAL HERITAGE

To answer the question, we should first recall the historic role of law and of lawyers in shaping, preserving and determining the direction of American society. From the beginning, this has been a nation imbued with law. Not since the collapse of the Roman republic has any western civilization depended so entirely on law to bind its disparate peoples together and to preserve self-government and individual liberty.

Fifty years ago, historians, politicians and journalists predicted a nation gradually becoming more homoge-

neous, developing a common culture and identifiable traditions. Technology, communication and transportation, they thought, would complete the melting pot process.

Yet, as we examine ourselves today, it appears that just the opposite has happened. These very innovations have provided the means of preserving the many diverse cultures which make up America. Today more of us read foreign language papers or watch a foreign language TV channel than ever before. Voter pamphlets and information are printed bilingually in many states, including our own state of Washington.

Despite the healthy differences and the disturbing divisions that characterize the American nation today, there is something which unites us as a people. When politicians speak of the Judeo-Christian tradition, they come closer to a profound thought about the American nation than they may realize. For, like the post-Pauline Christians, Americans are bound together, not by common heritage or ethnic solidarity but by our common beliefs, an American credo, if you will, and that credo, like the Ten Commandments, links liberty inseparably with the law.

Frederic C. Tausend is Dean, and David Boerner is Associate Dean of the University of Puget Sound School of Law.



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That perceptive observer of nineteenth century America, Alexis de Tocqueville, stated that sooner or later Americans turn every question into a judicial one. He described further how through the jury system, all citizens become an integral participating part of our system of laws. As distinguished from Japan or England, for example, it is not geographic or cultural homogeneity, an established class system, or a common religion, but the role of law as guarantor of liberty and a secure social order that supplies the ligaments of our society.

TOO MANY LAWYERS?

As a former Dean of the University of Washington Law School, Alfred J. Schweppe, stated in 1956:

A 'government of laws' without lawyers is an impossibility. . . In any government of laws lawyers have an indispensable place. Whenever anyone says that there are too many lawyers, I comment by saying that there are not enough; that a government of laws can survive only if the affairs of the people and of the government are at all times conducted according to law under the guidance of lawyers either by way of advice or through adjudication by courts.

When non-lawyers complain about the excessive number of lawyers, they may, in fact, be bothered about such specifics as the overconcentration of lawyers in metropolitan areas, the amount of time-consuming, costly and unnecessarily protracted litigation, or the phenomenon of too much legal talent devoted to the powerful, too little to the less fortunate.

'The preservation of a government of laws and a cohesive society depends to a great degree on lawyers.'

The answer, we believe, to these complaints lies not in a reduction in the number of lawyers but in a thoughtful reappraisal of the role of the lawyer in American society today. That reappraisal must include consideration of the professional education which future lawyers receive in law school.

In response to the complaints voiced by non-lawyers, often reemphasized in the press, members of the legal profession must indeed become more concerned with and more skilled at providing lawyers equipped by training and suited by temperament to know when to fight and when to cooperate, when to assert rights and when to resolve disputes. We must take the lead in searching out methods for

'The heritage of our profession demands we examine the needs society has for our services and develop structures for delivering those services in a manner which is accessible and affordable.'

avoiding disputes, and, when avoidable, for settling them more speedily, more efficiently, more economically and without lingering resentments—in many instances, without the need for lawyers. When lawyers in large numbers are able to do this, then we believe that public complaints about too many lawyers will become much less frequent.

But it is not just citizens who are asking the question, "Are there too many lawyers?" A Dean of another Northwest law school has said:

Almost every lawyer to whom one talks about the subject complains that too many lawyers are being trained.

This statement was made by Wayne Morse, then Dean of the University of Oregon Law School, in 1931. When he made it, there was one lawyer for every 500 inhabitants in Oregon. In 1981, there was approximately one lawyer for every 424 persons in Washington. Given the enormous increase in the number and complexity of legal issues facing our citizens and the explosion of governmental regula-

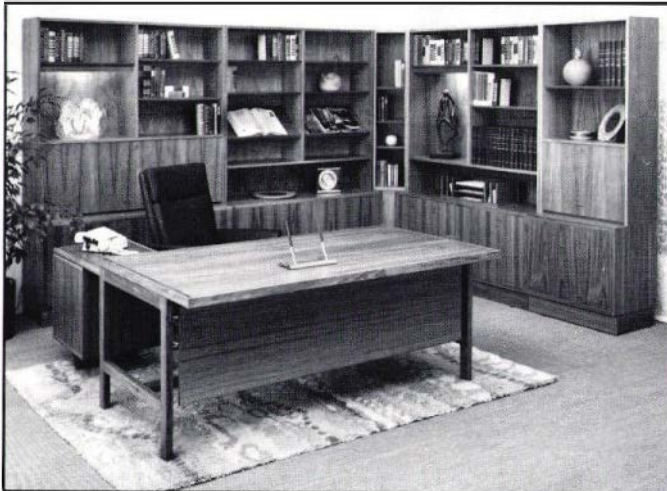
tions, this increase surely cannot result in Washington lawyers today having less to do than did Oregon lawyers in 1931.

Indeed, the complaint when it comes from lawyers smacks of the protectionist attitude of a guild. If we focus on the question solely from the short-range interest of the lawyer, we deny the best traditions of our profession. We should ask instead, have we satisfied our society's legitimate needs for legal services?

TOO LITTLE JUSTICE

With more lawyers in our society than ever before, substantial segments of our society have little or no access to legal services. The poor, whose access to the legal system began with such bright hopes just a few years ago, find their ability to seek legal redress for grievances increasingly dashed on the shoals of budget cuts and program restrictions. Those accused of crimes, whose right to legal services is guaranteed by the Constitution, all too often find themselves represented by inexperienced lawyers burdened

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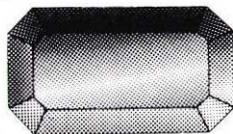
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by excessive caseloads. Members of the middle class find themselves unable to afford even routine legal services and rarely benefit from a regular preventive law program.

Rather than spend our creative energies debating how to limit access and preserve traditional areas of practice from the encroachment of outsiders, the heritage of our profession demands we examine the needs society has for our services and turn our attention to developing structures for delivering those services in a manner which is accessible and affordable.

The demands of the public, the provisions of the First Amendment, the antitrust laws and the economic realities of our times place us on the threshold of fundamental changes in the way law has traditionally been practiced.

'The answer lies in a thoughtful reappraisal of the role of the lawyer in American society today.'

Perhaps even genuine competition, including price competition, is at hand. Direct solicitation by mail and sophisticated advertising and public relations campaigns by lawyers are becoming commonplace. New forms of national legal organizations designed to provide low-cost, high-volume traditional legal services are spreading across the country. The practice of law as we have long known it will change.

LAWYERS MUST INNOVATE

Law students and lawyers also need to become not only more diverse in their skills, but more unconventional in their search for employment in which to use their legal training. There is no question that entry into the legal profession is more difficult than it was fifty years ago. Many beginning lawyers are not practicing in situations of their first choice. To the beginning lawyer whose aspiration is to practice in a large metropolitan firm or a governmental agency, comfortably receiving an income in the top twenty percent of society and continuously facing sophisticated and challenging legal issues, the picture may be forbidding. Competition is vigorous in those areas and many who seek such positions are bound to be disappointed.

But there are expanding opportunities for new lawyers. Increasingly, small and medium-sized corporations are finding the need for part-time and even full-time house counsel, thus creating new positions for young lawyers. While public interest law practice, including Legal Services,

is at the present time less attractive to many law students than it was just a few years ago, we are confident that, to borrow a phrase from former Federal Trade Commission Chairman Michael Pertschuk, we are simply witnessing "the rise and pause" of the legal services/public interest movement. People, having been made aware of their legal rights, do not quickly forget them. Since the need is there, in one way or another the opportunity for lawyers will continue.

At the University of Puget Sound Law School, our Placement Office is broadening the categories of positions which we are encouraging our students to seek. We are urging law students and young lawyers to consider less traditional ways of using their legal training and talents, including in business and executive management, in education and in cultural and civic enterprises. Experience shows that imaginative new lawyers can even create their own jobs. We are confident that the need for lawyers exists and is growing.

But lawyers must be imaginative, innovative and sensitive to what it is that society wants and expects of lawyers. If we follow the guild alternative and retreat into a closed profession, we run the risk of becoming increasingly irrelevant and subject to external regulation. Our recent experience with real estate closings should teach us we no longer have a monopolist's power to control the delivery of legal services.

LIMITED ACCESS UNJUST

To those who believe that the solution is to limit access to the profession, we ask: Who decides who gets excluded? What criteria are to be used? Will the Bar set numerical quotas or will the law schools be the excluding "guardians of the gate?" Are we confident enough in the freedom from cultural bias of law school admission tests to rely on them to determine who gets in and who is denied the chance?

The composition of the Bar has changed dramatically in the past decade and that change will continue. The number of minorities in law school today is double what it was ten years ago. In the 1972-73 school year, there were 98,042 students attending law school in America, 86,658 men and 11,384 women. This year there were 121,791 law students, 76,252 men and 45,539 women. Had the decision to close the doors been made ten years ago, who would have been excluded? Would the Bar and society be better for it?

This nation has thrived on competition and prospered by a steady increase in the opportunities available to individuals and previously excluded groups. The preservation of a government of laws and a cohesive society depends to a great degree on lawyers. It is the sobering responsibility of our profession to meet the legitimate needs of our society. This will require a combination of the very best thought and an unswerving commitment to the best in our heritage. We think that that leadership will come from the men and women who will become lawyers in this decade. □

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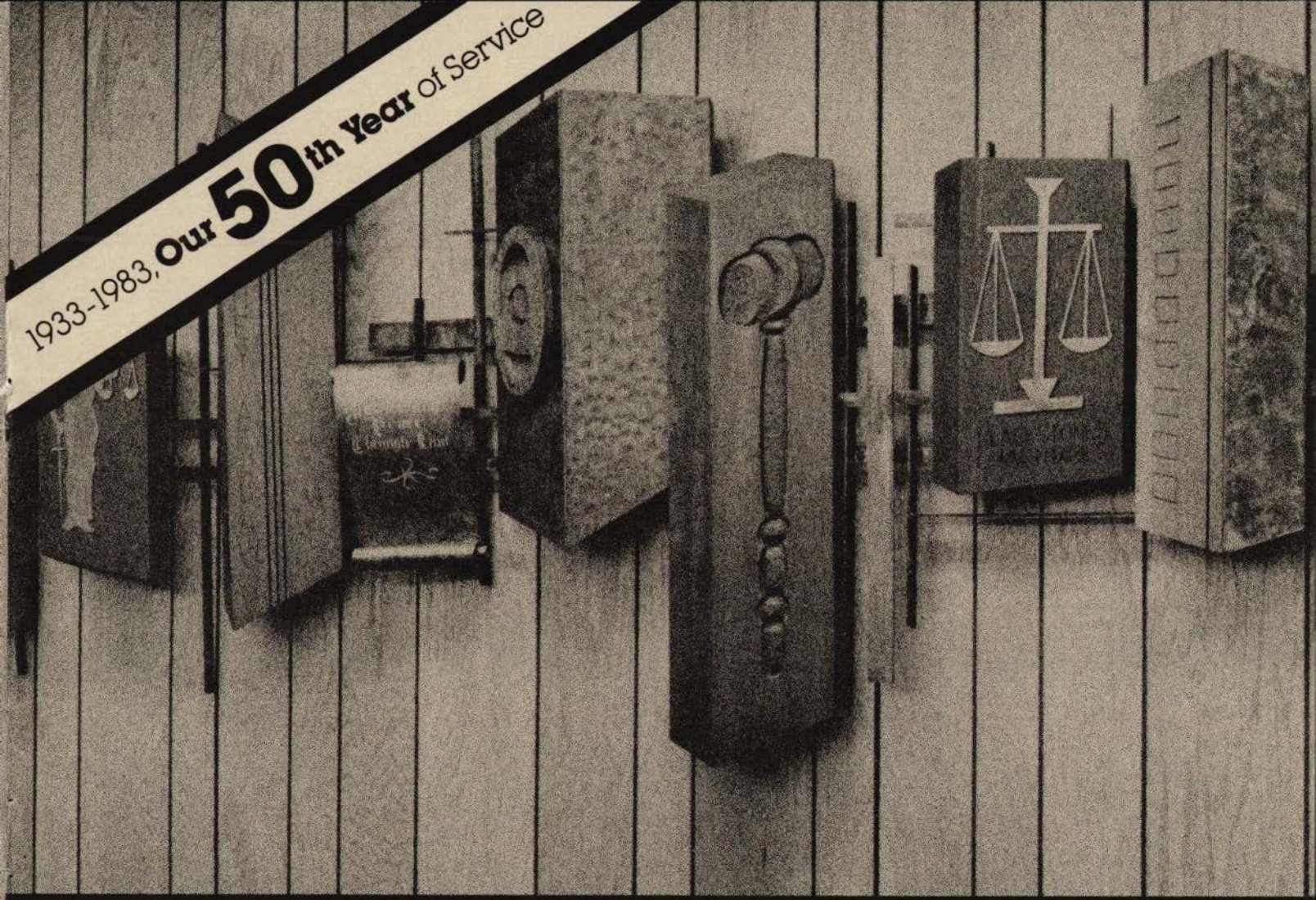


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1983 Annual Report of the Washington State Bar Association





1983 Annual Report



Washington State Bar Association

Introduction

We are rapidly approaching a milestone in the history of the legal profession in this state. June 7, 1933 was the effective date of the State Bar Act (Chapter 2.48 RCW) establishing the unified Bar in Washington. As we commemorate the 50th Anniversary of the State Bar Association it is highly appropriate that I present this Progress Report to you.

In past years, the "Annual Report" of the Bar Association has involved a presentation of the Association's annual audit, as conducted and prepared by our independent auditors. The audit for fiscal 1982 is made a part of this Report. As the audit is on an accrual basis, there is also presented within the context of this Report an unaudited statement on a cash basis which more accurately shows the cash position of the Association for the comparable accounting period. In addition to financial information, it is also appropriate to report to you briefly on the major activities and developments which have taken place in the past year or so. Those activities and developments have been significant and major in their scope; so much so that I cannot hope to do more than touch upon each in a "once over lightly" fashion.

I would seriously doubt that any issue has, at least in recent years, engendered more comment and discussion within the profession than that involved here: whether non-lawyers should be permitted to handle certain functions in real estate closing transactions. The question has been answered in the affirmative with the adoption by the State Supreme Court of Admission to Practice Rule 12 (see 98 Wn.2d 1101). This Rule, carrying an effective date of January 21, 1983, establishes a Limited Practice Board charged with conducting examinations for certification, investigating and recommending qualified applicants to the Supreme Court, accrediting qualified educational programs, and developing and implementing grievance and disciplinary procedures.

The Limited Practice Rule was initially proposed by a Special Task Force appointed by then State Bar President Dave Welts and was thereafter approved and recommended to the Supreme Court by the Board of Governors. As you know, prior to its adoption the proposed Rule was the subject of public hearings, consultation with industry representatives, and extensive comment by the public and members of the legal profession and other affected groups. Quite clearly, there are varying viewpoints on the

Limited Practice Rule for Closing Officers

underlying problem and varying degrees of agreement, or lack of agreement, with the action which has been taken. However, I do believe, and in a view which I believe is shared by a majority of you, that the adoption of this Limited Practice Rule by the Supreme Court provides the best means of achieving industry coordination and public convenience and protection in the real estate closing process. That latter aspect or feature is of great importance and represents modern-day adherence to one of the now fifty-year-old stated purposes of the State Bar Association: "To promote, protect and further the public interest."

Legislative Program

We should all be extremely proud of our legislative program, as directed by the Board of Governors upon the advice of a dedicated Legislative Committee and as carried out by "our men in Olympia", John Fattorini and Bill Gissberg. Those two gentlemen are not only highly respected in the Capitol but have been highly instrumental in achieving the over 85% success rate—both on measures supported and opposed—that we have enjoyed in promoting and protecting the public's interest, and yours, in the legislative process.

That success rate could not possibly have been achieved without the efforts of our lawyer-legislators: men and women who, often at considerable personal sacrifice, have been in the forefront of enlightened public service and legislative contributions. A tip of the hat, and our continued support, is due to each of them.

In recent sessions of the Legislature, your Bar Association has expressed its views on potential legislation ranging across the full spectrum of public issues. Few, if any, however, have been of greater importance than the concept of a sales tax on fees for legal services. We have consistently opposed, and with vigor, such proposals and even as I pen these words in early March the ultimate outcome is far from certain. We have registered and pursued our opposition because of the inherent inequities involved. It would be easy for us, as lawyers, to oppose such a proposal because of the admittedly heavy administrative burdens involved—such as collecting, reporting and remitting the tax—that would be imposed upon our profession. That is, however, not the reason for our opposition. Quite simply put, our opposition is grounded upon the harsh impact of the proposed tax upon our clients. Sales taxes are passed on to the consumer; that is a hard fact of life. In addition to that direct economic impact on the public, such a tax runs the significant chance of causing individuals and businesses to avoid seeking legal help until it is absolutely necessary to do so, thus discouraging preventative and less costly legal services. Also, of course, at a time when the profession is working on ways to make legal services available at a lower cost so that more people who need legal help can afford it, a proposal that would increase the cost of legal services is clearly counterproductive. Lawyers have never sought a free ride—we have for years paid a high Business and Occupation Tax and have accepted recent increases in that tax, which is on our business and not on our clients, in recognition of our place in the overall tax picture in difficult economic times.

I have dwelt long enough on this issue, and perhaps by the time you read this it will have been resolved, at least temporarily. The point, however, is that our strong opposition to this sales tax, on the basis of its detrimental impact on the public, illustrates the clearest and most cogent reason for a strong legislative program. It is nothing less than our duty as lawyers. We do, however, pursue that duty with a measured discipline, necessitated by

the diverse views of our now over 12,000 members. Because of that diversity, your Board of Governors attempts to carefully restrict legislative activities to those areas of overriding concern and where a strong and clear consensus can be discerned.

RLD? Yes, RLD—an acronym for the new Rules for Lawyer Discipline which, as adopted by the Supreme Court, became effective on January 21, 1983. They represent a major and much needed overhaul of our disciplinary rules and are the product of, literally, years of study by the Board of Governors, the Bar Staff and the Supreme Court. The new Rules are among the most progressive in the country and, among other things, open disciplinary proceedings to the public (under careful safeguards); provide procedures for expedited resolution of disciplinary charges; and provide greater clarity in sanctions which may be appropriately imposed. These new Rules are a major achievement and, with the opening of proceedings to the public, should also have the effect of lessening any public suspicion about the ability and determination of the Bar to effectively self-police its membership. These are, of course, procedural rules and most of us have little occasion to study them. The Rules for Lawyer Discipline are published at 98 Wn.2d 1106 and because of their importance I personally believe every one of us should become familiar with the basic provisions.

RLD

In a very recent development, and one which has been at least partially precipitated by the loss of funding for the State Judicial Council, the Board of Governors has agreed to provide needed support and assistance to the State Supreme Court in the review and research of, and recommendations relative to, proposed changes in court rules. As presently envisioned, the basic procedures will include regular and systematic review of entire sets of court rules, rather than piecemeal efforts designed to amend single and specific rules. The focus of this effort will be the Bar Association's Court Rules and Procedures Committee, recommendations from which will go through the Board of Governors and, thence, to the State Supreme Court. This is, obviously, an important new function for the State Bar Association and one about which you will, I am sure, be hearing more of in the coming months.

Court Rule-making Procedures

The present financial position of the Washington State Bar Association is strong. This Progress Report includes the financial statements for fiscal 1981 and 1982 as prepared by our independent auditors. I believe that those financial statements—as reprinted at the end of this Report—are basically self-explanatory. In addition to those statements, as prepared by our auditors, I think it also appropriate to present to you a brief, unaudited statement on a cash basis indicating the cash position of the State Bar Association for the accounting period covered by the audit. In the form of an abbreviated "Income Statement" or "P and L Statement", this compilation is, as noted, not the product of our independent auditor's work but a staff-generated report based upon the audit and the actual cash position as of September 30, 1982. (See table on page 4.)

Association Finances

The figures in the following statement—particularly the "bottom line"—are extremely important: they reveal a strong Association cash position and the beginnings of a building of a financial reserve. One cannot, with certainty, predict what the future may bring in terms of added activities and responsibilities, and consequently needed financial resources and

WASHINGTON STATE BAR ASSOCIATION
Statement of Income For the Year Ended
September 30, 1982

Income (Revenues)		\$3,216,137	
Operating Expenses:			
Salaries	\$858,183		
Payroll Taxes/Benefits	164,911		
Rent & Utilities	161,157		
Postage & Printing	73,346		
Office Expense	153,543		
Public Relations/Support Activities	225,466		
Miscellaneous	44,816		
Depreciation & Amortization	23,175		
Direct Activity Expenses:			
Continuing Legal Education	492,366		
Bar Examination/Admissions	167,361		
Convention	226,161		
Discipline	50,236		
Bar News	196,949		
Committees	42,118		
Legislative	57,019		
Sections	93,209		
Client Security Claims	24,480		
Lawyer Referral Service	20,985		
			<u>3,075,481</u>
	Net::		\$ 140,656

expenditures, that may alter the situation. However, to the extent that the future can be seen in the light of existing circumstances, an increase in Bar Association dues is not on the immediate horizon.

Continuing Professional Qualifications

Are we doing, as a profession and as a whole, what we should be doing? Are we serving our clients properly? Are changes needed in educational processes—both at the pre-admission level and in continuing education? Are we due for internal revision and refocusing of how and on what basis we practice our profession?

Questions of that sort have been around for years. They are the natural inquiries of a self-examining profession. We are embarking upon an extended and in-depth attempt to find some of the answers. In October of 1982, as one of my first acts as Bar Association President, I appointed a blue-ribbon Task Force on Continuing Professional Qualifications. The Task Force has broad authority to inquire into all areas pertinent to its evaluatory mission; it will be conducting hearings and interviews; it will be assembling information from a variety of sources; it may survey all or selected segments of our membership. It is a long and time-consuming task (a report to the Board of Governors is expected in perhaps 18 months) and the questions, to say nothing of the answers, may be difficult to pinpoint. It is, however, an important bit of work directed toward advancing the profession.

Client's Security Fund

It is a regrettable fact that clients and others sometimes suffer pecuniary loss because of the dishonesty of members of the State Bar Association in connection with that member's practice of law, or because of the member's improper actions while acting as a fiduciary in a matter related to the member's practice of law. As you know, some years ago the Bar Association established, and continues to administer, a Client's Security Fund which is used to relieve or mitigate such losses in proper cases.

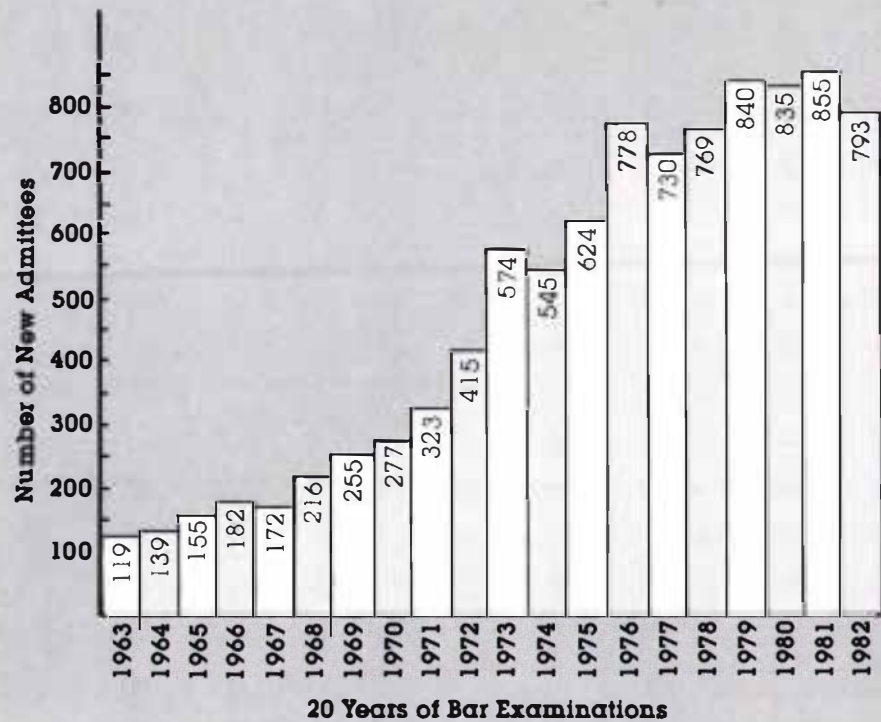
In an age where other Bar Associations, for a variety of reasons including financial problems, have severely curtailed their activities in this area, it is worthy of note that your Board of Governors has established a definite funding policy which will hopefully and eventually result in the Fund reaching a self-perpetuating (through interest earned) level. This is an important step and represents a renewed commitment by the Bar Association: a commitment which is entirely voluntary on the part of the profession. The current balance in the Client Security Fund is in excess of \$200,000, with a budgeted additional appropriation this year of \$50,000. The current intent of the Board of Governors is to build the Fund, through yearly appropriations and with the accrual of interest, to a level in excess of \$400,000—which is believed sufficient to reach the self-sustaining level. This is a major commitment by the State Bar Association and will be achieved, hopefully, within the next four years.

The Bar Examination

For most of us, the Bar Examination and the Admission process is something we go through and then give little thought to for the remainder of our professional careers. The Examination and Admission process, however, is one of the very most important functions the State Bar Association performs as an arm of the Supreme Court. The past year has seen, upon the recommendation of the Board of Bar Examiners, a series of major changes in the examination, including: a slight shortening of the examination to make it less of an endurance test and more of a test of knowledge; the elimination of "optional" questions—**all** questions presented must now be answered by each examinee; and a shift from multiple-choice to short answer essay questions on the separate Ethics portion of the examination. The new format of the examination was first employed at the March, 1983 Bar Examination—with very favorable evaluation, including from those sitting for the exam. We had, by the way, a record (for a **winter** examination) 400+ examinees at the March, 1983 examination. Before leaving that subject—and to show you quite graphically how our numbers have been growing in recent years—I draw your attention to the following "graph" which I asked the Bar Staff to prepare and which shows the number of new admittees to the Bar in each of the past twenty years.

Bar Association membership continues to grow at a very rapid pace. With a present membership in excess of 12,000 lawyers, approximately 60% of our current (1983) members have been admitted to practice for ten years or less. Although the figures are not totally verifiable, it appears that approximately 70% of the lawyers who have **ever** practiced law in Washington State are practicing **today**. During the fifty years since the State Bar Act became effective, the number of lawyers in our state has quadrupled, with the bulk of that growth occurring in the past decade. In twenty-five year increments, State Bar membership has grown as follows:

1933—2,700 1958—4,100 1983—12,096



A Transition Year

The now 50-year history of the Washington State Bar Association has, among other things, been characterized by remarkable administrative consistency and continuity: in those 50 years we have been served by a grand total of four (4) Executive Directors. The third of those individuals, Eddie Friar, retired at the end of 1981 after 10½ years (including 125 consecutive Board of Governors meetings) of tireless and dedicated service and at a point in time when he was acknowledged as one of the "best in the business." I am pleased to report to you that our fourth Executive Director, John Michalik, has easily and comfortably moved into the spot and we enter our second 50 years with another strong set of hands holding the reins. John would, I know, be the first to point out that the success in making the transition and moving us into the second fifty years is in large measure attributable to a vigorous, dedicated, young and yet tremendously experienced Bar Staff. John and his five senior staff members alone have a combined 55 years of bar association experience, almost all of it with the Washington State Bar Association. The collective abilities of this Bar Staff have made the wheels turn and made the past year much more than one of transition.

Odds and Ends ... and a Few Final Thoughts

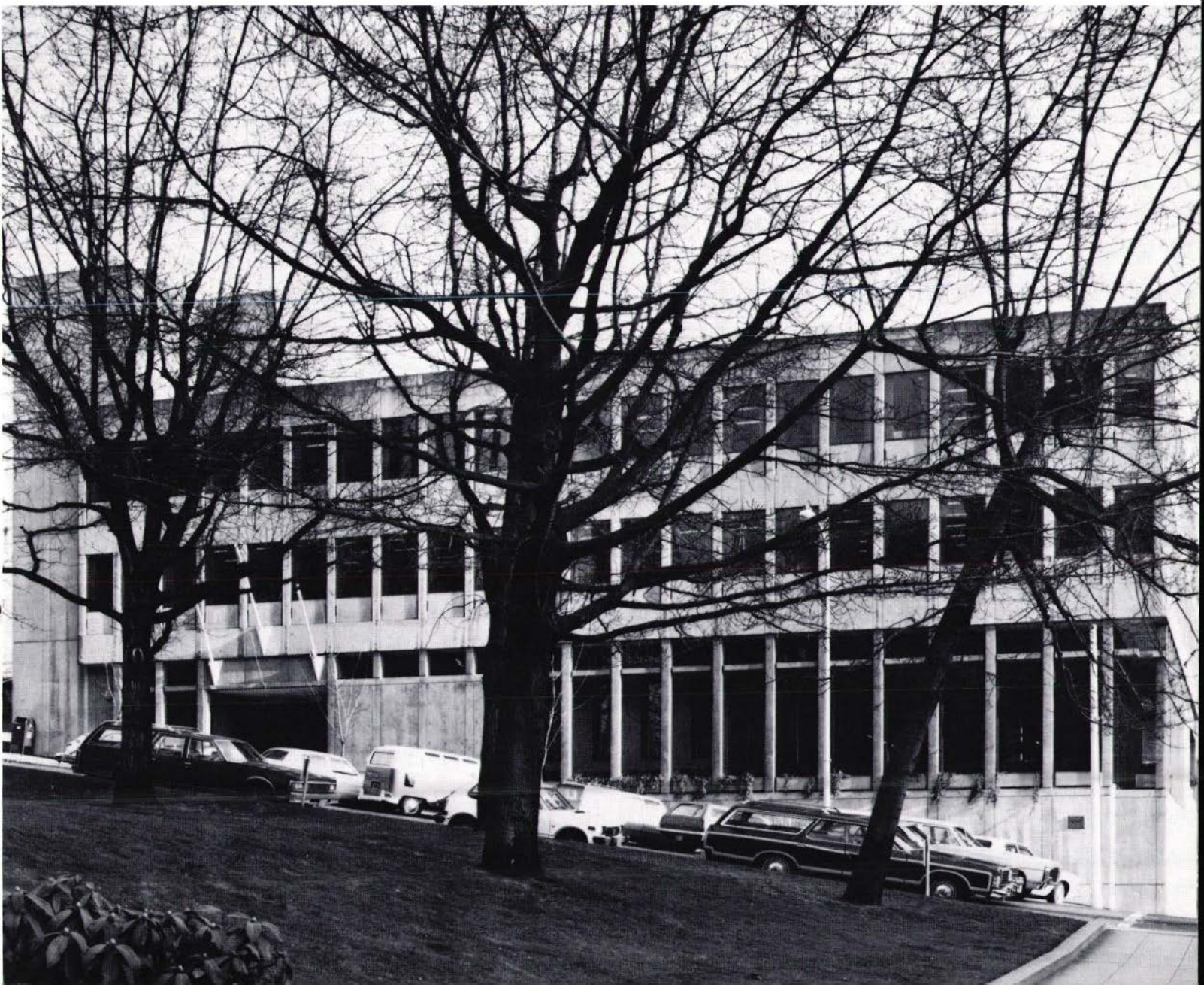
In the preceding paragraphs, I have merely touched the surface of the sea of activities and developments which have occurred in the past year or so. Without much effort, I could go on for many more paragraphs to report to you on, for example: (1) the long overdue and needed revisions adopted by the Board of Governors in our Fee Arbitration Program, which serves clients and lawyers alike; (2) current developments in continuing legal education and the mandatory continuing legal education program; (3) renewed vigor—aggressive vigor—in our Public Affairs program; (4) the 1982 State Bar Convention—absolutely the best ever and the continuing model for State Bar Conventions around the country; (6) the

proposed Interest on Lawyer Trust Accounts Plan, of which you have already heard much and will hear more; and (7) the complete review, revision and updating of the Bar Association's By-Laws, which will be published for your information in a future issue of the State Bar News.

It has indeed been a year of Progress. More importantly, it has been a half-century of Progress—progress which has, in the final analysis, reflected a dedicated profession and dedicated individual members of that profession. As I approach the half-way point of my year as your President, a year in both the first and the second fifty years of the State Bar Association, I look back with pride and forward with anticipation and confidence. It is my pleasure to serve as President in these times: a greater honor no attorney could hope to receive.

Paul W. Steere

Paul W. Steere,
President



1981-1982 Audit of the Washington State Bar Association

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To the Board of Governors of the
Washington State Bar Association

We have examined the statement of assets, liabilities and fund balances of the Washington State Bar Association as of September 30, 1982 and 1981, and the related statements of revenue and expenses, changes in fund balances, and changes in financial position for the years then ended. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the aforementioned financial statements present fairly the financial position of the Washington State Bar Association at September 30, 1982 and 1981, and the results of its operations, changes in its fund balances, and changes in its financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

December 1, 1982

Von Harten & Company

Assets

	1982	1981
Cash		
Checking accounts	\$ 125,920	\$ 157,117
Savings accounts	840,392	546,098
Accounts receivable	72,163	63,626
Office supplies	25,162	35,130
Deferred costs and prepaid expenses	71,016	61,063
Furniture, equipment & leasehold improvements (Notes 1b and 2)	<u>101,474</u>	<u>115,820</u>
Total assets	<u>\$1,236,127</u>	<u>\$ 978,854</u>

**Washington State
Bar Association
Statement of Assets,
Liabilities and
Fund Balances
September 30,
1982 and 1981**

Liabilities and Fund Balances

Liabilities and deferred revenues		
Accounts payable	\$ 450,664	\$ 360,513
Deferred revenue (Note 1c)	529,911	433,373
Equipment contracts payable (Note 3)	<u>14,947</u>	<u>21,458</u>
	995,522	815,344
Deferred compensation (Note 6)	375,326	288,087
Commitments and contingent liabilities (Notes 4, 5 and 6)	<u>—</u>	<u>—</u>
Total liabilities	1,370,848	1,103,431
Fund balances (Note 1a)	<u>(134,721)</u>	<u>(124,577)</u>
Total liabilities and fund balances	<u>\$1,236,127</u>	<u>\$ 978,854</u>

The accompanying notes are an integral
part of these financial statements.

**Washington State
Bar Association
Statement of
Revenues and Expenses
Years Ended
September 30,
1982 and 1981**

	1982	1981
Revenues:		
Membership dues	\$1,596,579	\$1,300,113
Continuing legal education	626,982	649,796
Bar examination fees	257,685	239,000
Bar news	227,063	174,742
Convention (Note 7)	175,955	175,476
Interest earned	105,335	97,689
Legislative donations	8,259	8,830
Sections	117,800	98,254
Miscellaneous	100,479	71,111
	<u>3,216,137</u>	<u>2,815,011</u>
Expenses: (also see expenses by activity)		
Salaries	858,183	810,805
Payroll taxes and benefits	164,911	151,486
Rent and utilities	161,157	147,237
Postage and printing	73,346	64,367
Office expense	153,543	107,072
Public relations and support activities	225,466	199,873
Vacation and sick pay provision (Note 8)	53,500	—
Miscellaneous	44,816	6,063
Depreciation and amortization	23,175	23,313
Direct activity expenses:		
Continuing legal education	492,366	553,457
Bar examination and admissions	167,361	164,292
Convention (Note 7)	226,161	291,094
Discipline	50,236	72,453
Bar news	196,949	168,804
Committees	42,118	69,742
Legislative	57,019	63,295
Sections	93,209	73,166
Client security claims	24,480	42,706
Lawyer referral service	20,985	19,332
	<u>3,128,981</u>	<u>3,028,557</u>
Total expenses from operations		
	<u>3,128,981</u>	<u>3,028,557</u>
Other Expenses:		
Deferred compensation (Note 6)	97,300	288,088
	<u>97,300</u>	<u>288,088</u>
	<u>3,226,281</u>	<u>3,316,645</u>
Excess (Deficiency) of Revenues Over Expenses:		
General fund	(26,733)	(515,146)
Legislative fund	(4,416)	5,504
Section fund	28,468	28,260
Client's security fund	(7,463)	(20,252)
	<u>\$ (10,144)</u>	<u>\$ (501,634)</u>

The accompanying notes are an integral part of these financial statements.

	1982	1981
Cash, beginning of year	\$ 703,215	\$ 657,713
Source of funds		
From operations		
Excess of revenues over expenses	—	—
Add back expenses not requiring Outlay of funds—depreciation and amortization	23,175	23,313
	23,175	23,313
Increase (decrease) in liabilities and deferred revenue		
Deferred compensation	87,239	288,087
Accounts payable	90,151	187,115
Equipment contracts payable	(6,511)	(2,256)
Deferred revenue	96,538	21,911
	290,592	518,170
Uses of funds		
Excess of expenses over revenue	10,144	501,634
Additions for furniture, equipment and leasehold improvements	8,829	15,138
Increase (decrease) in other assets		
Accounts receivable	8,537	(640)
Office supplies	(9,968)	7,429
Deferred costs and prepaid expenses	9,953	(50,893)
	27,495	472,668
Increase (decrease) in funds		
Checking	(31,197)	100,160
Savings accounts	294,294	(54,658)
	263,097	45,502
Cash, end of year	\$ 966,312	\$ 703,215

**Washington State
Bar Association
Statement of
Changes in
Financial Position
Years Ended
September 30,
1982 and 1981**

The accompanying notes are an integral
part of these financial statements.

**Washington State
Bar Association
Statement of
Expenses By Activity
Years Ended
September 30,
1982 and 1981**

	1982	1981
Revenue-Producing Activities:		
Continuing legal education	\$ 757,468	\$ 796,970
Bar examinations and admissions	315,937	281,238
Bar news	290,031	239,731
Convention (Note 7)	226,161	294,791
Sections	149,866	108,817
Legislative	139,758	135,881
Lawyer referral services	83,148	57,081
Other Activities:		
Discipline	483,510	443,998
Committees	101,595	119,833
Membership mailings and special projects	85,113	93,954
Public affairs	102,756	96,028
Conferences and meetings	143,686	136,499
Miscellaneous activities	108,682	83,137
Lawyer trust account audits	69,985	59,733
Legal intern and lawyer placement	46,805	38,160
Client security claims	24,480	42,706
Total expenses from operations	<u>\$3,128,981</u>	<u>\$3,028,557</u>

Note: Each of the above accounts includes a pro-rata allocation of administrative and overhead expenses as shown on the statement of revenue and expenses.

**Washington State
Bar Association
Notes to
Financial Statements
September 30, 1982**

1. Summary of Significant Accounting Policies

- a. Assets and liabilities, and revenues and expenses for the years ended September 30, 1982 and 1981 are recognized on the accrual basis of accounting.
- b. Furniture, equipment and leasehold improvements are stated at cost, less accumulated depreciation computed on the straight-line method. Furniture and equipment are depreciated over their estimated useful lives of from five to ten years and leasehold improvements are amortized over the shorter of the useful lives of the improvements or the lease period.
- c. Dues are recorded by the Washington State Bar Association as revenue in the applicable membership period. Seminar registration fees are recorded as revenue in the period in which the seminar is held. Accordingly, unearned dues and seminar fees are included as deferred revenue in the financial statements.
- d. The Legislative Fund is required to be maintained as a separate accounting entity. However, the purpose for maintaining all other funds as separate entities is for internal accounting purposes only.

2. Furniture, Equipment and Leasehold Improvements

The following presents the amounts of furniture, equipment and leasehold improvements at September 30, 1982 and 1981:

	1982	1981
Furniture and equipment	\$164,491	\$161,183
Leasehold improvements	74,764	73,469
	<u>239,255</u>	<u>234,652</u>
Less accumulated depreciation	<u>137,781</u>	<u>118,832</u>
	<u>\$101,474</u>	<u>\$115,820</u>

Depreciation expense was \$22,680 and \$22,818 for the years ended September 30, 1982 and 1981, respectively.

3. Equipment Contracts Payable

The equipment contracts payable are summarized as follows:

	1982	1981
Contract payable to IBM, in monthly installments of \$164.54 including interest at 11.75%. The contract is secured by the underlying equipment.	\$ —	\$ 325
Contract payable to Xerox Corporation in monthly installments of \$145.67 including interest at 11%. The contract is secured by the underlying equipment.	1,998	3,563
Contract payable to Xerox Corporation in monthly installments of \$116.72 including interest at 16%. The contract is secured by the underlying equipment.	2,398	3,392
Contract payable to Xerox Corporation in monthly installments of \$435.94 including interest at 15%. The contract is secured by the underlying equipment.	10,551	14,178
	<u>\$14,947</u>	<u>\$21,458</u>

4. Lease Commitments

	Year Ended September 30,	
The Bar Association leases office space under a non-cancelable lease until June 30, 1987. The minimum rental commitments under the present lease are summarized:	1983	\$112,632
	1984	112,632
	1985	112,632
	1986	112,632
	1987	84,474

During the years ended September 30, 1982 and 1981, the Bar Association sub-leased a portion of its office space which resulted in a reduction of net rental expenses of \$36,668 and \$32,670, respectively.

5. Client's Security Fund

It is the estimate of management that with current restrictions, conditions and limitations pertaining to various claims presently filed, that the Bar Association's total present exposure to the Client's Security Fund does not exceed \$100,000.

6. Deferred Compensation

Effective January 16, 1978, the Bar Association entered into an Employment and Deferred Compensation Agreement with its then Executive Director, G. Edward Friar. This agreement was, by mutual consent, amended on September 10, 1979 and again on September 5, 1980. The agreement requires monthly payments as a general obligation of the Bar Association upon termination of the employment of the said Executive Director. The vesting requirements of this agreement and its amendments were met on December 31, 1980 and December 31, 1981, respectively. Mr. Friar retired as Executive Director on December 31, 1981. The estimated balance due under the agreement and its amendments has been computed on a present value basis using actuarially determined life expectancy tables and interest rates and is reflected as a liability of the Bar Association in the financial statements. The total amount to be paid to the former Executive Director will depend upon his actual life span.

7. Convention

In prior years it has been the custom of the Bar Association to sponsor an annual convention during each fiscal year ended September 30. However, the 1979-1980 convention was held after September 30, 1980 and therefore the present financial statements reflects the revenue and expenses for two conventions held in the fiscal year ended in 1981. The 1982 results reflect one convention, however:

8. Compensated Absences

Pursuant to a recent accounting rules change an employer is now required to accrue a liability for employees' rights to receive compensation for future absences when certain conditions are met. The Bar Association met the conditions for accrual as of December 31, 1982.

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Bar Association
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Washington State Bar Association

505 Madison Street
Seattle, Washington 98104



Return of the Lawyers

by Edward D. Seeberger

Four years ago, the *Washington State Bar News* carried an article entitled "The Vanishing Lawyer Legislator."¹ During 1979-80, the 46th session of the Washington State Legislature boasted only ten lawyers.² In the next election, that total fell by two. In just fourteen years the total number of lawyer/legislators had plummeted from 39 to eight. There were times between 1979 and 1983 when there were no attorneys at all in first the House Democratic Caucus and then the House Republican Caucus. A non-lawyer, Representative Irving Newhouse, actually served as chairman of the House Judiciary Committee.³

Just when it seemed lawyers had indeed vanished from the legislature, the 1982 elections produced a dramatic turnaround. Lawyers ran for and were elected to the legislature in numbers that immediately doubled their previous membership. The sixteen lawyers serving in the 48th Legislature, while still less than half the total of twenty years ago, represent the highest number in a decade. Nothing demonstrates the resurgence more dramatically than the fact that 56% of the lawyers currently serving in the legislature are freshmen.

Those lawyers that are not freshmen include some of the most influential members. In the Senate there is R. Ted Bottiger, Majority Leader; Jeannette Hayner, Minority Leader; George W. Clarke, Republican Floor Leader; Phil

Talmadge, Judiciary Committee Chairman; and Dick Hemstad, ranking minority member of the Judiciary Committee. In the House, Seth Armstrong chairs the Judiciary Committee and Mike Padden is the ranking minority member.

WHY DID THE LAWYERS STAY AWAY?

Why did so few lawyers choose to run for and serve in the legislature in the last decade compared to earlier?

There are several reasons. First, the legislature itself has changed. It is no secret in Olympia that many, if not most, legislators devote full-time to their legislative duties. This imposes an extreme burden on lawyers, because of the highly personal nature of their professional duties. Clients want their own lawyer, not some surrogate from the same firm.

As Abe Lincoln observed, what a lawyer sells is his time. In 1974, legislators received \$3,200 per year for what was viewed as a part-time job. Today, the salary is about \$12,000 per year, but the demands of the job have grown considerably. There is precious little time left for non-public duties, for earning a living, for family, friends or recreation.

A second factor in the disappearance of lawyers from the legislature was the lack of financial support from the legal profession. Throughout the 1970s, major interest groups in business and labor escalated their campaign contributions and support. Not so the lawyers. As late as 1978, attorney-related organizations were not even among the top fifteen contributors to legislative campaigns. With the

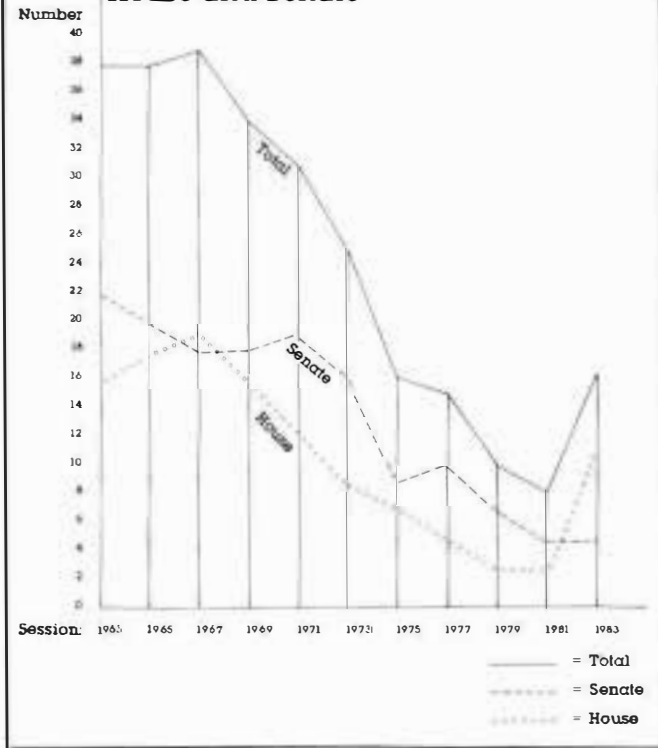
¹ "The Vanishing Lawyer Legislator," *Washington State Bar News*, Vol. 33, No. 2, February, 1979, pp. 6-9.

² The article actually claimed only eight. However, William Ellis was subsequently appointed to the House and Senator Ray Van Hollebeke, while not a practicing attorney, does have a J.D. from Gonzaga University.

³ Rep. Irving Newhouse (R) from the 15th District served with great distinction and competence. The point being made is that this position had always before been held by a lawyer.

Edward D. Seeberger is an attorney who served one term (1975-76) in the Washington State House of Representatives while maintaining a private law practice in Yakima. He has worked for the legislature as a caucus attorney, committee counsel and staff counsel. He is currently Acting Staff Director for Senate Committee Services.

Lawyers in the Legislature, 1963-1983 House and Senate



cost of campaigns reaching \$50,000, it is easy to understand the need for any candidate to start from a solid base of support.

In 1982, total campaign contributions from attorney groups (mostly the trial lawyers) ranked fifth, according to the Public Disclosure Commission. By comparison, pro-business United for Washington gave about \$306,000. State employees gave \$150,000; teachers \$152,000; then came labor, dentists and lawyers all at about \$75,000.

Initial fears that public disclosure requirements would interfere with the confidential relationship between attorney and client turned out to be ill-founded, thanks to Commission interpretation and some technical statutory modifications. The PDC forms are simple and straightforward and do not place an impossible burden on the practicing attorney.

LAWYER ACTIVISM

Representative Seth Armstrong believes lawyers have regained their interest in legislative issues and the need for moderation and independence in the legislature. He expressed it this way: "Something like support for higher education is extremely important to lawyers. Budget cuts in this area mean more to us because we know the value of higher education."

Representative Marlin Appelwick believes that attorneys, by virtue of their training and constant exposure to the law, are more aware of legislative actions. This aware-

ness has led to a frustration during the past few years and that, in turn, has led to more activism among attorneys.

How do lawyers maintain a private law practice and serve in the legislature? Appelwick says he routinely introduces all his clients to every attorney in his firm and stresses a team concept from the beginning. He says his partners help by taking some extra caseload and that he works weekends and evenings. This is typical of most legislators who have a private law practice. Senator Bottiger, the Senate Majority Leader, maintains a private telephone line at his own expense in his Olympic office in order to keep in touch with his law office.

The personal nature of the practice of law makes it more difficult for lawyers from Eastern Washington to serve. The 48th Legislature has but two lawyers from Eastern Washington, Michael Padden, a second-term Republican from the 4th district, and Dennis A. Dellwo, a freshman Democrat from the 3rd District, Spokane.

According to Representative Dellwo, lawyers from Eastern Washington must literally close down their entire practice during legislative session and then try to revive it upon their return. "It is with the patience of our clients and partners that we can survive, nothing less," he says.

A LOOK AT YOUR LAWYER/LEGISLATORS

Here are brief portraits of the lawyers serving in the 1983 legislature:

Senator R. Ted Bottiger, Democrat, represents the 2nd District, comprising part of Pierce and Thurston Counties. He practices law with Cohoe, Counsell, Murphy and Bottiger in Tacoma. He has served in the legislature since 1964. Senator Bottiger is Senate Majority Leader and a member of Ways and Means, Rules, and Financial Institutions Committees.

Senator George W. Clarke, Republican, represents the 41st District in King County, where he now practices law with the firm of Clarke, Bovingdon, and Cole. He has served in the legislature since 1966. Senator Clarke is currently



LAWYER/SENATORS — (l. to r.) Jeanette Hayner, George W. Clarke, R. Ted Bottiger, Phil Talmadge and Dick Hemstad.



LAWYER/REPRESENTATIVES — (l. to r.) Front row—Joe Tanner, Ernest Crane, Dennis Dellwo, Marlin J. Appelwick and Stuart Halsan. Backrow—Pat McMullen, Paul King, Janice Niemi, Seth Armstrong, Mike Padden and Gary Locke.

Republican Floor Leader and a member of the Rules, Judiciary, and Financial Institutions Committees.

Senator Jeannette Hayner, Republican, represents the 16th District of Walla Walla, Franklin and Benton Counties. She has served in the legislature since 1972. Senator Hayner is Leader of the Senate Republicans and a member of the Ways and Means, Rules, and Judiciary Committees.

Senator Dick Hemstad, Republican, represents the 22nd District of Thurston County. First elected in 1980, he is a professor at the University of Puget Sound School of Law. Senator Hemstad serves on the Judiciary, Education, and Energy and Utilities Committees.

Senator Phil Talmadge, Democrat, represents the 34th District of King County. He is an attorney with the firm of Karr, Tuttle, Koch, Campbell, Mawer and Morrow in Seattle. Senator Talmadge was reelected to his second four-year term in 1982. He is Chairman of the Senate Judiciary Committee, and a member of the Ways and Means and Parks and Ecology Committees.

Representative Marlin J. Appelwick, Democrat, represents King County's 46th District. He is an attorney with the firm of Appelwick and Trickey in Seattle. Representative Appelwick is a freshman. He serves on the Ways and Means, Judiciary, Commerce and Economic Development, and Education Committees.

Representative Seth Armstrong, Democrat, represents the 36th District in Seattle, where he is a partner in the firm of Armstrong and Alsdorf. Representative Armstrong chairs the House Judiciary Committee and serves on the Energy and Utilities and Education Committees.

Representative Ernest Crane, Democrat, represents the 31st District in South King County. He practices law with Johnson and Crane in Auburn and is city attorney for Algonia. He is past president of the South King County Bar Association. Representative Crane, a freshman, serves on

the Judiciary, Financial Institutions, and Higher Education Committees.

Representative Dennis Dellwo, Democrat, represents the 3rd District in Spokane, where he practices law and teaches at Gonzaga School of Law. Representative Dellwo, another freshman, is Vice Chairman of the Social and Health Services Committee, and serves on the Judiciary, Environmental Affairs, and Labor Committees.

Representative Stuart Halsan, Democrat, represents the 20th District, which includes Lewis County and part of Thurston County. He has a private practice in Centralia. Representative Halsan, a freshman, is Vice Chairman of the Natural Resources Committee and a member of the Judiciary and the Commerce and Economic Development Committees.

Representative Paul King, Democrat, represents the 44th District in the counties of Snohomish and King. He is a freshman legislator who has a private law practice in Seattle. Representative King is Vice Chairman of the Education committee, and a member of the Financial Institutions and Judiciary Committees.

Representative Gary Locke, Democrat, represents the 37th District in southeast Seattle. He is a former legal advisor to the Seattle Human Rights Department, and he is serving his first term in the House. Representative Locke serves on the Judiciary, Energy and Utilities, Higher Education, and Natural Resources Committees.

Representative Patrick McMullen, Democrat, represents the 40th District of Skagit, Whatcom and San Juan Counties. He is a former prosecuting attorney of Skagit County and is now in private practice with the firm of McMullen, Reed, Reilly and Weyrich. Representative McMullen is Vice Chairman of the Judiciary Committee, and a member of the Higher Education, Natural Resources and Transportation Committees.

Representative Janice Niemi, Democrat, who represents Seattle's 43rd District, is an uncommon freshman legislator in that she is also a former Superior Court Judge. Representative Niemi is Vice Chairman of the State Government Committee, and a member of the Commerce and Economic Development and Social and Health Services Committees.

Representative Mike Padden represents Spokane County's 4th District. He is the lone Republican lawyer/legislator in the House. Representative Padden practices law in Spokane. He is the ranking minority member of the Judiciary Committee, and serves on the Social and Health Services and Commerce Committees.

Representative Joe Tanner, Democrat, represents the 18th District in Clark and Cowlitz Counties. He is both a businessman and a lawyer. Representative Tanner was chosen Vice Chairman of the Commerce and Economic Development Committee and serves on the Constitution and Higher Education Committees. □

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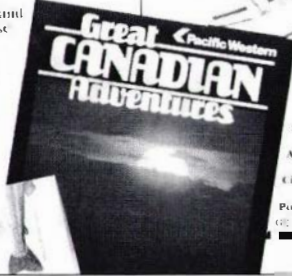
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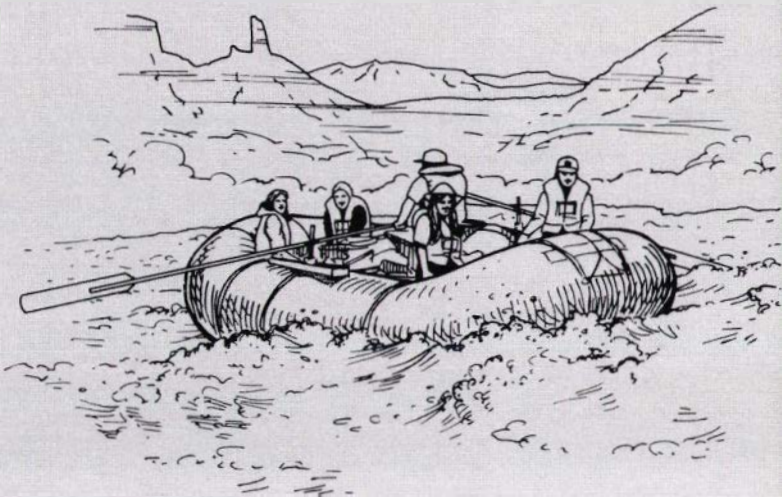
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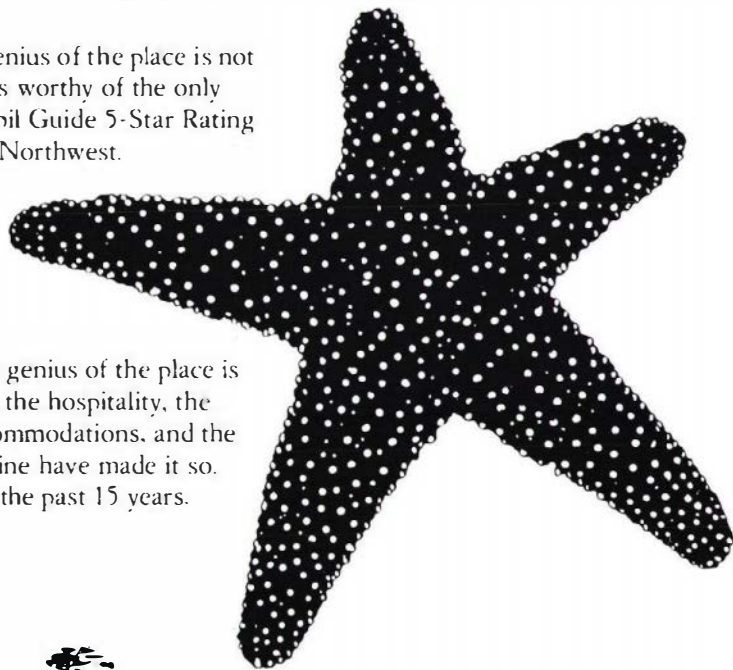
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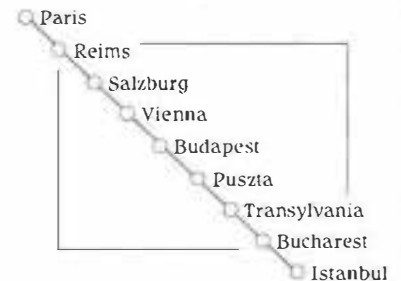
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WASHINGTON STATE BAR NEWSLINE

The Board's Work



by Steven A. Reisler

RECIPROCITY: BANE OR BOON?

VANCOUVER, B.C., March 18-19 -- Washington is one of only twelve states which do not provide for the reciprocal admission to practice of attorneys who have been admitted in another state.

Seattle attorney Lish Whitson proposed to the Board that the WSBA take a more enlightened approach to the practice of law by permitting reciprocity for lawyers admitted to another state's bar who have practiced for at least three years. Whitson stated that it is not in Washington's interest to create impediments for seasoned out-of-state lawyers who wish to practice here. He told the Board that court rules and rules of evidence vary little from state to state. Although substantive law may differ in details, substantive law is always in flux and even lawyers in Washington must constantly work to keep abreast of change.

Governor Bill Dwyer agreed that the one legitimate goal of the bar exam is to protect the public, not control the number of lawyers. Nevertheless, Dwyer argued that there are significant differences in practice among the different states. He suggested the idea of an "attorney's exam", such as existed several years ago, to cover those areas of law unique to Washington.

Governor Paul Gibbs noted that although he had opposed treating law school professors as a separate class of lawyers who could be admitted to practice without taking the bar, he was sympathetic to the reciprocity concept. Gibbs suggested that to oppose reciprocity was to take an "insular position."

George Kargianis, Eighth District Governor, did not see the bar exam as a "bar" to out-of-state lawyers. Kargianis argued that the Bar must be concerned about the number of lawyers practicing in Washington because too many lawyers can have a deleterious effect on the quality of practice. The older bar used to hire young lawyers and train them, Kargianis said. Now, with more and more lawyers entering the market, a larger percentage of young lawyers are forced into practicing on their own, sometimes learning their trade at the public's expense.

Whitson stated that the bar should concern itself solely with an out-of-state lawyer's competency and character, not with what economic impact more lawyers will have on the legal community. He suggested that if there are too many lawyers practicing in Washington, the problem is best addressed by the law schools.

Kargianis agreed that part of the answer to the competency problem created by the sheer number of lawyers could lie in incorporating more 'hands-on' practical training into law school curriculum.

Although Whitson maintained that it was in the public's best interest to encourage proven, experienced attorneys to practice in Washington, Pete Dewell of the Second District disagreed. The number of years in practice is no guarantee of competency, Dewell said. In his experience, some lawyers fresh out of law school are more competent than those who have practiced many years.

Fourth District Governor Read recommended that the issue of reciprocity be further studied. By consensus, the Board referred Whitson's proposal to the Task Force on Continuing Professional Qualifications.

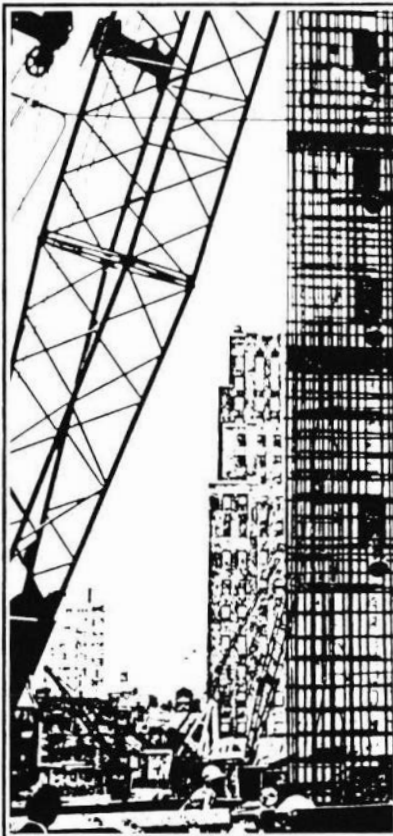
**IOLTA
EDUCATION**

As of its March meeting, the WSBA held these official positions regarding interest on client trust accounts:

- 1) Support, in principle, an Interest on Trust Accounts Rule;
- 2) Support the proposition that client funds subject to such Rule are "nominal" or "short term", without further definition of those terms;
- 3) Support the proposition that some "board" administer the funds for worthy law-related causes. By 8-0 vote (Read and Beezer abstaining), the Board expressed its willingness to support the creation of an administering board other than the already existing Bar Foundation.

President Steere appointed a liaison committee (Tom Loftus, Bill Dwyer, Paul Steere) to confer with representatives of the Seattle-King County Bar Association in an attempt to work out a mutually agreeable program. The program would then, in turn, be recommended to the WSBA and SKCBA.

Governor Read criticized the Board, however, for conferring only with the Seattle-King County Bar rather than with all the state's county bar associations. Read cautioned that some lawyers have begun to feel that the WSBA is a King County Bar Association and that the Board is trying to cram things down the membership's throats.



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Fifth District Governor Joe Delay agreed that there is opposition to the IOLTA concept but suggested that the opposition is rooted in a lack of understanding about IOLTA. Delay recommended that the Board sponsor a traveling information seminar to meet with lawyers around the state and disseminate information.

It was finally agreed that the Board would attempt to better educate the bar about IOLTA by making it a significant agenda item at the annual local bar presidents meeting in May in Seattle. Local bar presidents, it is hoped, will then relay information about the proposed program to their own local lawyers. Seventh District Governor Bob Beezer reminded everyone, though, that the Board was just one of a number of bodies providing input to the Special Task Force which, in turn, will make its recommendations to the Supreme Court.

OTHER BOARD ACTIONS

- **PRESIDENTIAL SEARCH** -- Tom Loftus, Pat Comfort, and Jim Vander Stoep were appointed to search for candidates for president of the WSBA in 1983-84.
- **CENTRAL AMERICAN RESOLUTION** -- By unanimous vote the Board denied approval to the World Peace Through Law Section to endorse a resolution regarding U.S. policy toward Central America. The section was given leave to submit the resolution at the annual convention.

THE NEXT MEETING OF THE BOARD OF GOVERNORS WILL BE HELD AT THE THUNDERBIRD INN AT JANTZEN BEACH, OREGON, ON APRIL 15-16.

SPECIAL NOTICE: This issue of the *Bar News* discusses whether there are too many lawyers in Washington. Unfortunately, too many lawyers submitted too many worthwhile articles, causing the editor to consign his own column to the wastebasket. By public demand, the editor's column will resume in the next issue.

EXTRA SPECIAL NOTICE: No, you have not been dropped from the Bar's mailing list! The March and April issues of the *Bar News* were mailed late in order to include a Directory of Services and the Annual Report. Regular publication schedules will resume in May.

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Notes From the Academy

Edited by Professor William B. Stoebuck
University of Washington School of Law

ADMINISTRATIVE LAW. Failure to properly mail notice of appeal to director of Department of Labor and Industries when seeking superior court review is irreparable jurisdictional defect. *City of Spokane v. Department of Labor and Inds.*, 33 Wn. App. 554 (1983).

—J. M. Vache

CIVIL PROCEDURE. Service of process by publication was not sufficient to support default judgment for child support against nonresident defendant but was sufficient to support dissolution decree. *In re Marriage of Johnston*, 33 Wn. App. 178, 653 P.2d 1329 (1982).

—P. A. Trautman

CONSTITUTIONAL LAW. (1) It does not deny equal protection under either 14th amendment or state constitution to impose one-year confinement on juveniles for misdemeanors punishable, had they been adults, by imprisonment not to exceed 90 days. While defendants' "fundamental" interest in liberty required state to show a "compelling interest" was served, this requirement was satisfied by a showing that extended confinement was needed "to achieve the State's substantial purpose of rehabilitating juvenile offenders." *State v. Rice*, 98 Wn.2d 384 (1982). (2) Due process requires that in hearing for initial commitment for sexual psychopathy burden on state be proof beyond reasonable doubt. Severity of result (confinement and stigma) is at least as great as in *In re Winship*, 397 U.S. 358 (1970), where Court required that degree of proof in juvenile delinquency proceeding. *State v. Rinaldo*, 98 Wn.2d 419 (1982).

—R. L. Fletcher

CONTRACTS. (1) *Ultra vires*, though disfavored in an action between private parties, does protect a state agency from contract damages. But injured plaintiff may recover for unjust enrichment. *Noel v. Cole*, 98 Wn.2d 375, 655 P.2d 245 (1982). (2) Owner of newly constructed apartment may recover from defaulting builder replacement cost, rather than difference in value, unless cost is "clearly disproportionate to the probable loss in value." *Eastlake Constr. Co. v. Hess*, 33 Wn. App. 378 (1982).

—L. V. Rieke

CRIMINAL LAW AND PROCEDURE. (1) Where rape defense is consent, "intent" and "motive" not in issue; de-

fendant's prior similar acts not admissible. *State v. Saltarelli*, 98 Wn.2d 358, 655 P.2d 697 (1982). (2) Search warrant for house does not authorize search of nonowner occupant; neither does finding narcotics in next room. *State v. Broadnax*, 98 Wn.2d 289, 654, P.2d 96 (1982). (3) Burden is on state to prove, beyond reasonable doubt, absence of self-defense, where some evidence of self-defense admitted; legislature did not intend to put burden on defendant. *State v. McCullum*, 98 Wn.2d 484 (1983).

—G. R. Nock

DOMESTIC RELATIONS. Modification of custody requires showing of "change in circumstances" detrimental to child (RCW 26.09.260), but it need not be shown that child has already been harmed. *Frasier v. Frasier*, 33 Wn. App. 445, 655 P.2d 718 (1982).

—L. V. Rieke

LOCAL GOVERNMENT. City ordinance requiring windows in doors of massage rooms in licensed massage parlors and not in doors of other personal service businesses does not violate equal protection. Warrantless window inspections pursuant to reasonable time, place, and manner restrictions do not violate fourth amendment. *Door v. City of Puyallup*, 33 Wn. App. 310, 654 P.2d 720 (1982).

—J. M. Vache

TORTS. (1) Parents have "wrongful birth" action and children have "wrongful life" actions against physician who prescribed drug for mother that caused children severe birth defects and physician negligently failed to warn parents of this possible effect. Children's damages limited to additional costs of special medical treatment and training. Opinion contains "hornbook" of Washington law of medical malpractice. *Harbeson v. Parke-Davis, Inc.*, 98 Wn.2d 460 (1983). (2) Nineteen-year-old decedent drank alcoholic beverages at party and, after leaving, lost control of her automobile and was killed. Adult party hosts held not liable when decedent was not obviously intoxicated or helpless and was not in special relationship to hosts. *Wilson v. Steinbach*, 98 Wn.2d 434 (1982).

—R.S.L. Roddis

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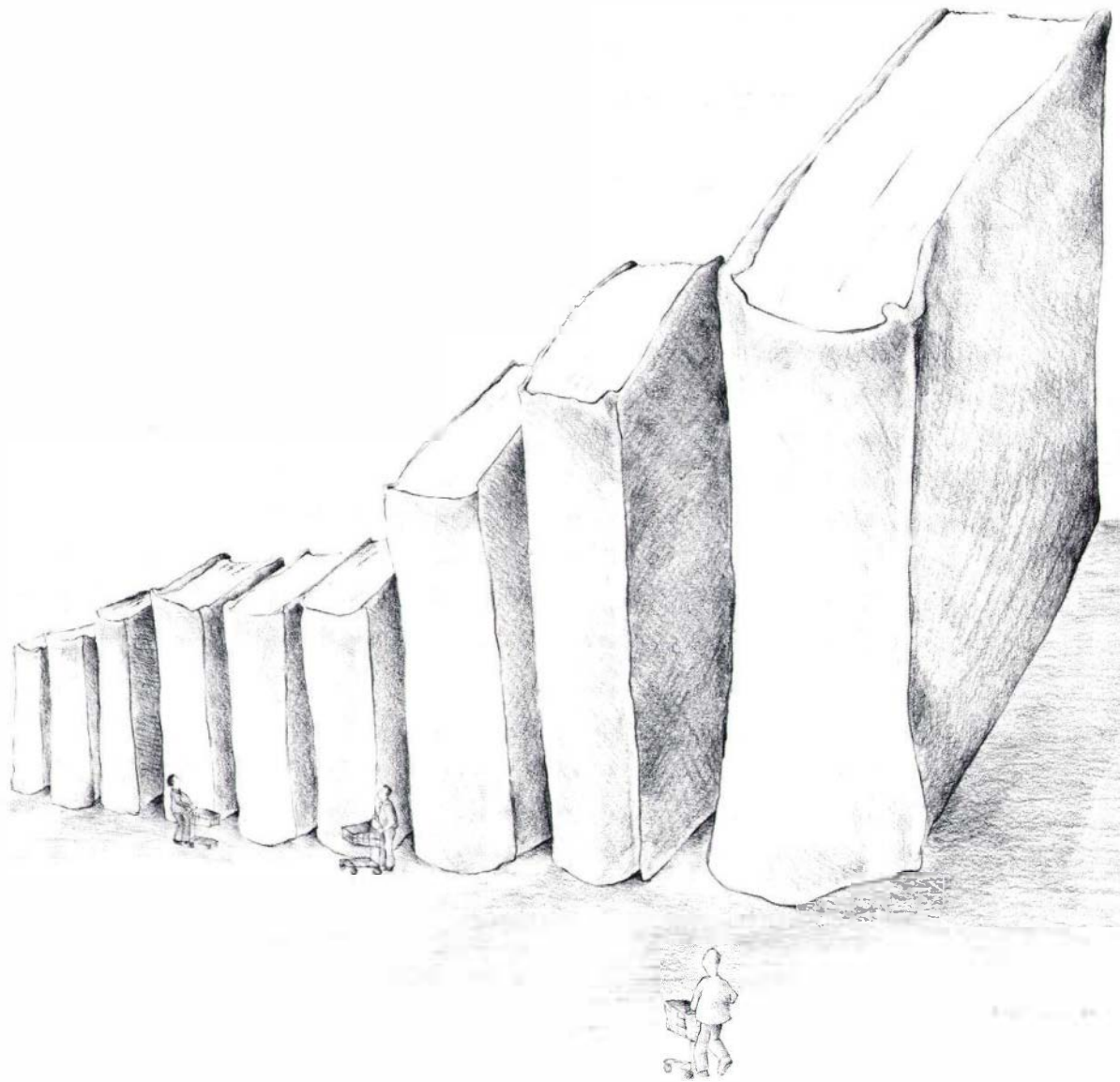
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The CLE Response to the Competence Issue

by **T. Noble Foster**
Director of Continuing Legal Education

At the Mid-Year meeting of the Association of CLE Administrators (ACLEA) in New Orleans this February, CLE administrators were presented with a proposal and an opportunity by the ABA Standing Committee on Lawyers' Professional Liability. The Committee Chairman, Ronald E. Mallen of San Francisco, a recognized expert on legal malpractice, described to CLEA members the work of his committee in studying the issue of legal competence and its relation to professional liability insurance and legal malpractice.

Mr. Mallen presented statistics published by the ABA which indicate certain types of legal practice which are more prone to malpractice claims than others. The statistics were based on a national sample of 7,021 claims filed with lawyer malpractice insurers during the period from January, 1981, to June, 1982. The information was compiled by the National Legal Malpractice Data Center, which is a computerized databank of detailed information on over 4,000 nationally reported claims against lawyers.

While the statistics presented were wrapped in several layers of disclaimers and qualifications, nevertheless, some reliable observations can be made. Of the 7,021 claims filed, real estate matters accounted for 25.7% and plaintiff's personal injury cases accounted for 23.4%, the two highest subject matter categories. Another group of statistics reveals that 24.9% of the claims filed are based upon problems arising during the commencement of the action, and 20.5% of the claims are filed in connection with the preparation and transmittal of documents.

For CLE providers, this data is very significant. It provides a target list of topics requiring the immediate attention of CLE planners and speakers. In a special meeting with the Executive Committee of ACLEA, a proposal was outlined which would provide CLE instruction designed to heighten lawyers' awareness about legal malpractice in those subject areas which tend to generate the most claims. The ABA Standing Committee on Lawyers Professional Liability intends to make available to all state CLE directors, through ACLEA, a report on legal malpractice claims filed in the individual states. The ACLEA Executive Committee, which represents the over 225 CLE provider-members nationwide and in foreign jurisdictions, agreed to

work with Mallen's Committee to begin to incorporate into locally produced CLE programs a significant "dose of preventive medicine," designed to provide CLE registrants with information which will be helpful in avoiding legal malpractice claims.

In order to better understand the implications of statistics like these, and to put programs into action which will serve to assist lawyers in combatting legal malpractice through CLE, the ACLEA Executive Committee has scheduled a follow-up meeting with Mr. Mallen in March. It is anticipated that a draft proposal for a structured CLE response to the legal malpractice problem will be agreed upon at that meeting.

Individual Bar members who are interested in obtaining the full report of the ABA Standing Committee on Lawyers' Professional Liability should contact Jo Ann Felix-Retzke at the American Bar Association headquarters, 1155 E. 60th Street, Chicago, Illinois 60637, telephone (312)947-3682.

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CLALLAM COUNTY

by BILL KNEBES

On February 5, a large contingent from the Clallam County Bar Association, including spouses and friends, travelled to Victoria, B. C., to attend the Victoria Bar Association Spring Dinner/Dance. The event was a rousing success, in large part due to the organization of **Bill McDowell**, who also led the way on the dance floor. Able mariners **C. T. Walrath** and **Gary Velie** made the trip by sail. **Marjorie Forest** lent an air of elegance and sophistication to our contingent.

On a less happy note, prosecutorial misconduct has extended to outside the courtroom. The Bar Association basketball team, playing in the playoffs of the local church league under an assumed name, lost a 1 point overtime game when Deputy Prosecutor **John "Chippy Call" Hayden** was whistled for a technical foul with 3 seconds remaining in the game.

LEWIS COUNTY

by T. CHARLES ALTHAUSER

On February 18, the Lewis County Bar Association held its monthly meeting. As the members in attendance grew impatient for their lunch, they focused their hostility on two members who were obviously dozing and, in accord with tradition, unanimously proclaimed them officers for the ensuing year. **Kenneth G. Johnson**, the newly elected president, was awarded the local badge of office, to wit: a can of BS Repellent. **Joe Mano**, the unseated president, was last heard to be in retreat with the other members of his firm.

The county bar basketball team, playing under the alias of a local insurance firm, has clinched first place in the stonefingers and inertia division of the local slow-break league (despite a record number of turnovers per

game). The team developed a reputation of losing the close ones and playing better after the game.

As **Steven R. Buzzard** closes in on the completion of his new offices, the mystery is whether his bar will serve draft. This reporter is sure the mystery will be solved when Steve has his weekend open house.

John Panesko, Jr., the former prosecutor, has returned to practice with his father; **William T. Hillier** has become a partner with **H. John Hall**; **Brian Kelly** has been made a partner with Armstrong, VanderStoep & Remund; and Representative **Stuart Halsan** and former Thurston County Deputy Prosecutor **Ken Valz** have opened an office in Centralia. Good luck to all of you.

PIERCE COUNTY

by GEORGE KELLEY

Supreme Court Justice **James Doliver** was the featured speaker at the annual Lincoln Day Banquet held at the Tacoma Country Club. In attendance were 110 paying customers and 35 "guests," including various judges, members of the State Bar Board of Governors, and miscellaneous dignitaries. Next year's banquet may be scheduled as a brown bagger unless some means can be found to reduce the guest list.

John "Bert" Troup of University Place was elected vice-president of the Tacoma-Pierce County Bar Association. **Tom Faubion** of Lakewood was elected secretary-treasurer. However, downtown lawyers retained the balance of power on the Board of Trustees with the election of **Tim Lowenberg**, **John McCarthy** and **John Miller** to vacant positions. In a squeaker, **Fritz Hayes** managed to out-poll various write-in candidates for the president's position.

Ex-prosecuting attorney **Don Heron** has announced the opening of an office at 1535 Tacoma Avenue South.



Ex-deputy prosecutor **Don Winskill** is associated with the aforementioned Mr. Hayes and will presumably do the work while Fritz attends to bar business. **Doug Brown**, another refugee from the prosecutor's office, now practices in Sumner with **Chuck Robbins**.

Finally, Kane, Vanderberg, etc. have announced that **James R. Verellen** is now a partner, and **Fred Frohmader** and **Patrick J. Leahy** have moved their offices to the Old City Hall.

Department of Legal Issue—Congratulations are in order for the following Spokane attorneys, all recipients of recent visits by the stork: **Paul Cornelius** (girl); **Doug Tuffley** (boy); **Bill Maxey** (boy); **Jan Otterstrom** (boy); and **Dave Johnson** (girl).

People on the Move—Congratulations to **Keith Briggs**, now a partner in the firm of Axtell, Karademos, Ross and Briggs . . . **Larry Kuznetz** has recently become associated with the firm of Powell and Morris. Larry was formerly a staff attorney with The Department of Labor and Industries . . . **Jerry Hertel**, another L & I alumnus, has recently joined Woods, Riherd and Reed in the Northtown Building . . . **Roseann Verrecchio**, a 1982 Gonzaga graduate, has been hired as an associate by the firm of Delay, Curran, Thompson and Pontarolo.

Spokane attorney **Robert H. Leeds, Jr.**, has been appointed to the Board of Directors of the Spokane County Bar Association. Leeds will be filling

the vacancy created by the recent appointment of **Robert Austin** to the bench.

Break a leg, why don't you? . . . A good time was had by all at the "CLE and Ski" sponsored by the Spokane County Bar Association March 10, 11, and 12. Featured speakers addressed a variety of topics relating to settlement and trial of personal injury cases. The program has been approved for 7 CLE credits.

SPOKANE COUNTY

by **JON RASCOFF**

Spokane County attorneys and bar leaders are gearing up for the Washington State Bar Association Convention, scheduled to be held in Spokane in September, '83. A lively program combined with Spokane's usually beautiful September weather promises a good time for all . . .

SKCBA Trip to China

The Seattle-King County Bar Association, through its Comparative and International Law Section, is sponsoring a trip to the People's Republic of China for the purpose of developing a better understanding of that country's trade and commercial laws as well as establishing personal contacts with officials responsible for the implementation of such laws. A plan-

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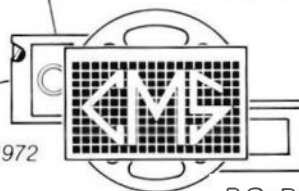
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ning meeting will be held on April 13 at the SKCBA Offices, 320 Central Bldg., Seattle, at 2:30 p.m.

Labor Law Conference

The Labor Law Section of the Seattle-King County Bar Association, in conjunction with the University of Washington, will hold its 16th Annual Pacific Coast Labor Conference on May 5-6 in Seattle. Featuring representatives of unions, management, academia and government, the conference is approved for 11.75 CLE credits. For more information, contact Thomas A. Lemly at (206) 622-3150, or Janet Davenport at (206) 543-5280.

Sexual Assault Seminar

"Sexual Assault: Representing the Victim (Emerging Legal and Psychological Issues)," a seminar sponsored by the Northwest Women's Law Center, will be held on April 29 at the Park Hilton in Seattle. For more information, contact Judith Andrews at (206) 632-8468.

Practice Pointers

The Lawyer's Guild will sponsor "Practice Pointers for the Newer Attorney," on April 29 in Seattle. The seminar will offer "practical instruction on matters they never taught you in law school," and is approved for 6 CLE credits. For more information, contact Bonnie Drew at (206) 622-5144.

AA for Attorneys

Alcoholics Anonymous meetings for attorneys are held Wednesdays at noon at the Nutcracker Restaurant, 715 Third Avenue (near the County Courthouse), in Seattle.

IN MEMORIAM

Jack R. Cluck, of Bellevue, died January 27 at the age of 75. Mr. Cluck was a founder of the Seattle law firm of Houghton, Cluck, Coughlin and Riley, and a graduate of the University

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of Washington Law School. During his career, he helped form state public utility districts and cooperative systems, among them Group Health of Puget Sound. He was active politically and in service organizations, and had been a member of the Bar since 1933.

Retired attorney **John A. Logan**, 82, of Seattle, died February 14. Mr. Logan served as a chief trial attorney for the City of Seattle from 1926 to 1965, with four years as a captain in the Army legal department during World War II. A three-sport letterman from the University of Santa Clara Law School, he was inducted into their Sports Hall of Fame in 1973. Mr. Logan had been a member of the Bar since 1930.

Maurice R. McMicken, of Bainbridge Island, died February 18 at the age of 90. Mr. McMicken retired 10 years ago from the Seattle law firm of McMicken, Rupp and Schweppe. A

graduate of Cornell University and the University of Washington Law School, he served for many years as a precinct committeeman and was a founding member of the Wing Point Golf and Country Club. He was admitted to the Bar in 1917.

in violation of (CPR) DR 9-102(A) and (B).

Daniel L. Evans Disbarred

Daniel L. Evans of Kent, Washington, was ordered disbarred by the Supreme Court of Washington on February 24, 1983. Mr. Evans stipulated to his disbarment based upon misappropriation of in excess of \$15,000 in client funds, and his 1982 first degree theft conviction based upon that same misconduct.

David L. Jamieson, Sr. Suspended

Tacoma attorney David L. Jamieson, Sr., was ordered suspended from the practice of law for a period of sixty days, by opinion of the Supreme Court of Washington filed February 17, 1983. Mr. Jamieson was suspended for neglect of a probate matter, open since 1976. The misconduct was similar to that involved in a prior reprimand which he had received.

DISCIPLINE

William L. Denend Disbarred

Port Orchard attorney William L. Denend was ordered disbarred by the State Supreme Court on February 3, 1983. Mr. Denend's disbarment was based upon his misconduct involving moral turpitude and dishonesty in violation of DRA 1.1(a) and (CPR) DR 1-102(A)(4); charging an illegal or clearly excessive fee in violation of (CPR) DR 2-106; failing to act competently in violation of (CPR) DR 6-101; and mishandling of client funds

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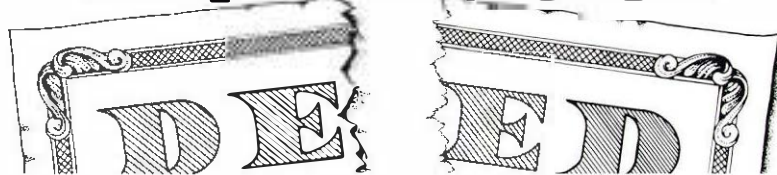
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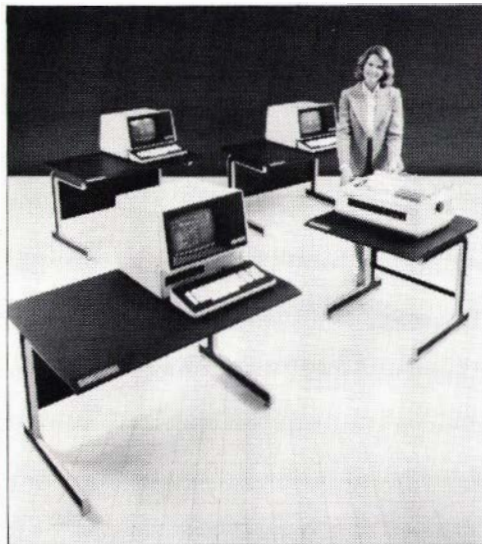
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